

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF: :
Phase II Distribution :Docket No.
of the 2004-2009 :2012-6
Cable Royalty Funds :
:CRB CD
:2004-09
:(Phase II)

IN THE MATTER OF: :
Phase II Distribution :Docket No.
of the 1999-2009 :2012-7
Satellite Royalty Funds :
:CRB SD
:1999-2009
:(Phase II)

Volume 1

Monday,
December 8, 2014

Room LM-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

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P-R-O-C-E-E-D-I-N-G-S

(9:36 a.m.)

JUDGE BARRETT: Good morning. Please
be seated.

(Off the record comments.)

JUDGE BARRETT: We got everything
ready, except the chairs. Good morning.

(Off the record comments.)

JUDGE BARRETT: We are here for
preliminary hearing in the matter of Distribution
of Cable Royalty Funds for the time period 2004
to 2009.

This is a Phase II proceeding and the
Distribution of Satellite Royalty Funds for the
period 1999 to 2009. Likewise, this is a Phase
II proceeding. Let's have appearances for the
record, please.

MR. OLANIRAN: Good morning, Your
Honor. Greg Olaniran for the Motion Picture
Association. I represent program suppliers. And
with me this morning are my colleagues, Lucy
Plovnick, Kim Nguyen, and Whitney Nonnette. And

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1 I also have present, Ms. Jane Saunders, of the
2 Motion Picture Association.

3 JUDGE BARRETT: Thank you.

4 MR. OLANIRAN: Thank you.

5 MR. BOYDSTON: Good morning, Your
6 Honor. Brian Boydston, on behalf of IPG,
7 Independent Producers Group. With me from IPG
8 this morning is Raul Galaz and Denise Vernon.

9 JUDGE BARRETT: Thank you.

10 MR. MACLEAN: Good morning, Your
11 Honor. Matthew MacLean for the Settling
12 Devotional Claimants. With me at counsel's table
13 is Arnie Lutzker, Victoria Lynch, Cliff
14 Harrington, and Ben Sternberg.

15 JUDGE BARRETT: Welcome, all. Our
16 Courter Reporter, if you have not already
17 introduced yourself to her, is Ms. Katie
18 Kolodzie. And she's with the Gross Firm that has
19 our contract, for now. And we've been pleased to
20 have them the last few sessions. They've seem to
21 have done a good job.

22 I have some housekeeping matters to

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1 take care of. The hearing as I, I'm not sure if
2 all of you were still in your offices when at the
3 last minute we zipped out some orders and
4 letters, but after today the hearing times will
5 be 9:00 a.m. in the morning until 4:30 p.m. in
6 the afternoon, Monday through Thursday.

7 As you might recall, we take a
8 15-minute recess in the morning and in the
9 afternoon, and we take a one hour recess at
10 mid-day.

11 We started today at 9:30 a.m., because
12 we understand the building doesn't open to the
13 public until 8:30 a.m. But when I got over here
14 everyone was here, so maybe we don't need to do
15 that first thing late start after all.

16 I know some of you brought your things
17 on Friday. So I think, for purposes of this
18 hearing, Mr. Boydston, you've come the furthest
19 and might be the most likely to have difficulty
20 getting in on time. Did you have any problem
21 this morning?

22 MR. BOYDSTON: No we didn't.

1 JUDGE BARRETT: Okay. So we might be
2 able to start at 9:00 a.m. every day going
3 forward. It's too late to do that today. The
4 parties have proposed an order of presentation,
5 which the Judges have accepted and we anticipate
6 sticking to that order of presentation.

7 We also anticipate that the parties
8 will extend professional courtesies, as and when
9 necessary, should witness scheduling become an
10 issue.

11 The Clerk, Ms. Whittle, is the keeper
12 of the official exhibits. And she has provided,
13 I think, to each of you a copy of the official
14 Exhibit List for everyone's use.

15 Witnesses, when they are asked about
16 exhibits, are to refer to the official exhibits
17 only, not copies that you're playing with, or
18 using, or making notes on, the official exhibits
19 that Ms. Whittle keeps.

20 At the end of the hearing then, that
21 means you will not have to supply us with, yet,
22 more paper, because we will have the official

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1 exhibits in our possession.

2 And she will make sure of it, so if
3 any of your witnesses tries to sneak out with an
4 official exhibit, she will track them down and
5 get it back.

6 The parties have estimated time for
7 hearing to be 26-and-a-half hours, which given
8 our calendar, is six days. That means we will be
9 here Monday through Thursday, and Monday, Tuesday
10 of next week, unless everything goes faster than
11 planned.

12 The time estimate includes one hour
13 per party for opening statement and closing
14 argument. And I remind Counsel once again that
15 opening statement is to outline what the evidence
16 will show, not to argue the law, and that closing
17 argument, get the subtly there? Closing argument
18 is to argue the law, not to state the evidence.

19 The Judges will monitor the
20 timekeeping, but as a backup, MPAA will track
21 time for IPG. IPG will track time for the
22 Settling Devotional Claimants. And, do you see

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1 where we're going here? The Settling Devotional
2 Claimants will track time for MPAA. I had with me
3 and I would like to hand out --

4 (Off the record comments.)

5 JUDGE BARRETT: I think all of you are
6 on what used to be called the List Serve for our
7 unit. And you're probably all aware of the
8 guidelines for submitting electronic documents,
9 but I provided each of you with a copy of the,
10 paper copy of it, in case you have not had an
11 opportunity to take a look.

12 We are at Government's speed trying to
13 move toward electronic filing. So we're starting
14 with, let's get the electronic documents that we
15 do have in a form that is most useful for you and
16 for us. So keep that in mind. It's on our
17 Website, if you need to refer to it again.

18 Just as a general matter, and this
19 does not apply in this proceeding, thank you very
20 much, when you submit, when any party submits
21 paper filings, those paper filings should be
22 ordered, tabbed, whole-punched, if necessary, in

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1 the same way as you would like us to use them.

2 For instance, if there's an amended
3 statement, the original statement was in a
4 binder, the amended statement should come
5 whole-punched, so we can put it in a binder.

6 We received a stack about like this
7 with no tabs, no nothing, and no wholes. We
8 don't have the staff, okay? We're not going to
9 be punching holes in a 1,000 pages of paper.

10 So if you want us to have your
11 submissions organized and accessible, make them
12 so, for the Judges and for the other parties.

13 Now, in an abundance of caution, let
14 me just say that it is our plan to issue a ruling
15 on the validity of claims, after today's hearing,
16 within about 60 days.

17 We are mindful that there is a final
18 hearing scheduled for March, but we are also
19 mindful that Congress leaves town on Thursday,
20 and that the United States budget authorization
21 expires on Thursday.

22 In the unlikely event that Congress

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1 does not pass, at least, a continuing resolution
2 to keep us open, we will grind to a halt.

3 As much as we would like to carry on
4 in the absence of spending authority, we would
5 not be permitted to work, if there is a shutdown.
6 So if that happens, we drop back down and punt.

7 Now, is there anything else we need
8 anyone want to offer for the good of the order?

9 MR. MACLEAN: Your Honor, two quick
10 points. First of all, we have two very short
11 witnesses, I've already confirmed with both sides
12 here, who if we need to call them at all, we
13 would like to call immediately after lunch on
14 Wednesday, just knock them out, only a few
15 minutes a piece, to accommodate their schedule so
16 they don't have to wait around.

17 The other point, over the weekend,
18 after reviewing, I think, all the exhibits, we
19 decided to withdraw a couple of challenges --

20 JUDGE BARRETT: Okay.

21 MR. MACLEAN: -- to argue these
22 claims. We did send an amended spreadsheet to

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1 the CRB, but I have a paper copy here, if you'd
2 like it.

3 In short, we're not going to challenge
4 IPG's 2004 claims, on the specific ground that
5 IPG failed to attach its Exhibit A to the claim
6 forms filed in July of 2005.

7 We're not going to challenge IPG's
8 2006 cable and satellite claims, on the ground
9 that IPG failed to show that the claim forms were
10 mailed in July of 2007.

11 And we're not going to challenge IPG's
12 2008 cable claim for Willie Wilson Production, on
13 the ground that Willie Wilson Production was not
14 identified in this 2008 cable claim.

15 If you're following along, in our
16 written rebuttal statement, those correspond to
17 arguments in our Section II, Subsections B1, B2,
18 and a part of B3, the part of B3 that applies to
19 IPG's 2008 cable claim, we maintain our challenge
20 to IPG's 2008 satellite claim, on the grounds
21 that certain claims weren't listed in its filing,
22 but I have our amended spreadsheet here.

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1 JUDGE BARRETT: Thank you. Mr.
2 MacLean, I would like to have a copy of the
3 amended spreadsheet. You sent it electronically,
4 is that correct?

5 MR. MACLEAN: Yes, Your Honor.

6 JUDGE BARRETT: Would you like a hard
7 copy?

8 JUDGE FEDER: Yes I would.

9 JUDGE BARRETT: Okay.

10 JUDGE FEDER: -- so I can see the --

11 JUDGE BARRETT: Okay.

12 JUDGE FEDER: -- electronic copy.

13 JUDGE BARRETT: Judge Feder is our
14 cyber judge, but since we're here and our
15 computers are not, we'll be happy to accept the
16 hard copy.

17 JUDGE FEDER: Thank you, Your Honor.

18 JUDGE BARRETT: Thank you, Mr.
19 MacLean.

20 MR. MACLEAN: And one last thing, Your
21 Honor. As you were stating it, I heard it, I
22 just wanted to confirm. If we go longer than

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1 four days, I understand we are not meeting on
2 Friday, but we are resuming on Monday?

3 JUDGE BARRETT: Correct.

4 MR. MACLEAN: Yes, Your Honor.

5 JUDGE BARRETT: Okay.

6 MS. PLOVNICK: Your Honor, as a part
7 of our written rebuttal statement, we had a
8 request for a judicial notice of some public
9 records, and we have a few additional public
10 records that are identified as MPAA Exhibits 300
11 through 307 in our exhibit binder.

12 And since these are all public
13 documents, we wanted to ask if our request for
14 judicial notice will be accepted, and offer those
15 into evidence, you know, move their admission at
16 this time, as a housekeeping matter, because
17 they're just public records.

18 JUDGE BARRETT: Are they in the
19 binder?

20 MS. PLOVNICK: They are. Yes, Your
21 Honor.

22 JUDGE BARRETT: Okay.

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1 MR. BOYDSTON: Your Honor, we do have
2 some issues with these. Frankly, I would like to
3 go through them very quickly, or do it however
4 you want to do it.

5 But, in general, our issues are
6 primarily in relevance these are, they are public
7 record, no question about that, and so being
8 public record, even if they're not admitted, you
9 are free, of course, to go find them and read
10 them. But by the same token --

11 JUDGE BARRETT: Thank you.

12 MR. BOYDSTON: Yes. But by the same
13 token, we don't see the relevance, and I can go
14 into detail, as need be.

15 JUDGE BARRETT: Why don't we wait
16 until they come up, I mean, if the issue of
17 relevance comes up at some point during the
18 hearing, we'll deal with it at that point, but
19 right now if we --

20 MR. BOYDSTON: I also want to say, we
21 have no objection to 300, 301, 302.

22 JUDGE BARRETT: Okay.

1 MS. PLOVNICK: Okay. Your Honor,
2 would you like me to address the relevance issue
3 now? Because I'm happy to do so.

4 JUDGE BARRETT: Is it easier to do it
5 now, or in context?

6 MS. PLOVNICK: I'm happy with doing it
7 now.

8 JUDGE BARRETT: Okay.

9 MS. PLOVNICK: So he said he had no
10 objection to 300, 301, and 302. 303, 304, and
11 305 and 306 are all records related to the 1997
12 Cable Phase II proceeding.

13 And the reason that we believe that
14 they are relevant are two reasons. First, they
15 relate to some titles that are at issue in this
16 proceeding, one in particular, Victim of Love,
17 that has been raised, and it shows that they were
18 already dealt with previously, and there's a
19 record as to those titles. Also, they relate to
20 credibility of witnesses that will be testifying
21 here today.

22 So there's other titles, as well, that

1 are addressed in there that are being offered
2 again here. Same for the 306, which is the
3 decision. 307 also addresses a claimant that is
4 at issue here, Feed the Children. And so those
5 are the public records that I was discussing and
6 why we believe they're relevant.

7 JUDGE BARRETT: Oh, 307, does that
8 relate to the notice we just received in the last
9 few weeks from Feed the Children?

10 MS. PLOVNICK: Yes, Your Honor, it
11 does.

12 JUDGE BARRETT: Okay. And that is
13 that exhibit?

14 MS. PLOVNICK: Yes, Your Honor.

15 JUDGE BARRETT: Okay. I got it. Mr.
16 Boydston, anything further?

17 MR. BOYDSTON: Well yes, Your Honor.
18 First off, just based on the explanation we just
19 heard, we have no objection to 303, 304, and 305.

20 However, regarding 306, 306 was the
21 decision published in the Federal Register for
22 that proceeding, and that has been vacated. And

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1 in fact, we tried to introduce it some hearings
2 ago, and the MPAA pointed out that it had been
3 vacated, and being vacated, it's vacated.

4 And so I'm not sure why that's being
5 entered here. Yes, it's in the public record,
6 but it's essentially been deleted from public
7 record by its vacation.

8 With regard to 307, it was not in the
9 rebuttal statement and it's not responding to, it
10 is not, I don't see that this document is
11 responsive to any position that IPG has taken in
12 its rebuttal statement, so I'm not sure, you
13 know, what is important and why it should come in
14 when it was not part of the rebuttal statement,
15 originally.

16 JUDGE BARRETT: Well, you know, IPG is
17 not the only other party here. Mr. MacLean,
18 Let's Feed the Children, I think, is an issue
19 that was raised with regard to your client.

20 MR. MACLEAN: Directly relevant to our
21 own case, Your Honor, and we have no objection to
22 its admission into evidence.

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1 JUDGE BARRETT: Okay, thank you.
2 Excuse me just a minute.

3 (Off the record comments.)

4 MR. BOYDSTON: Just very quickly, just
5 that it's important, just so you know, IPG is
6 making no claim in the Devotional category in
7 this proceeding for Feed the Children, based on
8 what happened with the last one, so it's not
9 actually an issue for SDC.

10 JUDGE BARRETT: Okay. Then there
11 being no objection to 300 through 305, those are
12 admissible, they are admitted, in fact, we will
13 admit them.

14 (Whereupon, the documents previously
15 marked as MPAA Exhibits 300 through
16 305 for identification were received
17 into evidence.)

18 JUDGE BARRETT: 306 and 307, we'll
19 just wait and see how that comes up as we get to
20 the context of the issue.

21 MS. PLOVNICK: Just one final point on
22 306, that was admitted at the preliminary hearing

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1 in the 2000 through 2003 Cable proceeding, and it
2 was admitted, so I'll just add that for
3 verification.

4 JUDGE BARRETT: I understand that it's
5 a vacated opinion, but the grounds for vacating
6 it, I think, are not, I mean, we have to delve
7 into a little bit, we can't just figure that out
8 in this context. So we'll see how it comes up
9 and deal with it at that time.

10 MS. PLOVNICK: Thank you, Your Honor.

11 MR. MACLEAN: Your Honor, in the
12 interim, we certainly want to be fastidious and
13 correct timekeepers for MPAA, we'll certainly
14 accept that responsibility.

15 JUDGE BARRETT: Okay.

16 MR. MACLEAN: Would you please give,
17 maybe, so that we're all doing things uniformly,
18 some guidance as to how we should score time,
19 with respect to objections and arguments on
20 motions like we just had?

21 JUDGE BARRETT: Yes. Well, first of
22 all, I don't think we've even started the clock,

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1 yet. But --

2 MR. MACLEAN: Okay, thank you.

3 JUDGE BARRETT: -- when we start the
4 clock --

5 MR. MACLEAN: That's helpful right
6 there.

7 JUDGE BARRETT: When we start the
8 clock, which is with the first word of MPAA's
9 opening statement, anything that happens,
10 including objections and so on and so forth,
11 during the MPAA time is MPAA's time, okay? And
12 the same with SDC and IPG. If other people are
13 objecting and doing voir dire of your witnesses
14 and what not, that's your time. Okay?

15 MR. MACLEAN: Yes, Your Honor. Thank
16 you.

17 MR. BOYDSTON: Your Honor, just a
18 clarification there, because it's possible that
19 the party might have an objection that needs to
20 be heard and it's very complex and it takes a
21 long time.

22 Perhaps, if we have something unique

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1 like that going on, though, we'll all acknowledge
2 it so that the time comes out of the objecting
3 party's time as opposed to, otherwise, you can
4 see that there could be a potential to suck
5 someone's time up by just objecting out the
6 window, right?

7 JUDGE BARRETT: No one in this room
8 would do such a thing, I know it. But, yes, you
9 know, I didn't get out my chisel and carve these
10 little notes, or rules, in stone. When
11 circumstances demand accommodation we will make
12 accommodations, okay?

13 (No Response.)

14 JUDGE BARRETT: Anything else?

15 (No Response.)

16 JUDGE BARRETT: Okay, we'll have
17 opening statement then, from MPAA.

18 MR. OLANIRAN: Good morning, Your
19 Honor. It's Greg Olaniran for Motion Picture
20 Association of America. And MPAA represented
21 program suppliers consist of member companies of
22 the Motion Picture Association, as well as other

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1 producers and distributors of syndicated series,
2 movies, and other television specials.

3 While there are other claimants within
4 the program suppliers' category, MPAA-represented
5 claimants are, by far, the single largest group
6 in that category, and they certainly have far
7 more titles than any other claimant, not only in
8 the program suppliers' category, but in this
9 proceeding.

10 Without question, in our view, MPAA
11 claimants are entitled to the overwhelmingly
12 larger share of the royalties in the program
13 suppliers' category.

14 As Your Honors noted earlier, in the
15 order of presentation will be that program
16 suppliers' category will make its presentation
17 first, followed by the Devotional claimants.

18 And our presentation within the
19 program suppliers' category will go as follows:
20 MPAA will start, make its presentation, and then
21 IPG will follow and MPAA will have an opportunity
22 to have a responsive presentation to address

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1 whatever may have happened during the IPG
2 presentation.

3 As Your Honors are aware, we filed a
4 written rebuttal statement, and IPG returned the
5 favor, if you will, and so our presentation will
6 start with the testimony of Mr. Rovin, to address
7 the categorization issues.

8 And just as an aside, we've not
9 necessarily conceded that the Judges should
10 consider the categorization issues, but his
11 testimony, in the event that the Judges agreed to
12 that issue, what our position will be amended,
13 will be on those issues.

14 Mr. Rovin's presentation will be
15 followed by Ms. Saunders, who will address MPAA's
16 claims, and she would also address evidence
17 supporting our written objections to IPG's claim
18 on the issues of organizational authorities.

19 And she may return to address what
20 else may happen during IPG's presentation. After
21 that, she will return after IPG's presentation to
22 address those issues.

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1 All of our objections to IPG's claims
2 have been fully briefed, so we don't intend to
3 regurgitate all of the issues that we raised in
4 the brief. But what we're trying to do with this
5 proceeding is highlight some of the more
6 important issues, as well as fortify some of the
7 things that we said in our briefs with evidence.

8 And we intend to demonstrate in this
9 proceeding, between our brief and our evidentiary
10 presentation, first and foremost, that IPG's
11 claimants are not entitled to a presumption of
12 validity in this proceeding.

13 Among other things that we intend to
14 show is that in the past IPG has misrepresented
15 its representational authority to these judges,
16 not the same panel of judges, but some of the
17 judges in the past, IPG has misrepresented its
18 statements, and we have evidence to show that IPG
19 did so.

20 We'll also show you with documents
21 after documents in the form of affidavits and
22 other documents, IPG's lack of authority to file

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1 claims, to file petitions to participate, and to
2 represent certain claimants in this proceeding.

3 We have evidence of what we think are
4 extreme cases of what we believe to be IPG's
5 misconduct. You will see evidence about A&E
6 Television, for example, where it's not one, not
7 two, but three termination letters, two that
8 occurred about, roughly, ten to 11 years ago, and
9 another one two or three years ago, before IPG,
10 at least, we have finally had no longer claims to
11 represent A&E Television.

12 You will see evidence of IPG's
13 strong-arm tactics where threat of litigation has
14 been put upon IPG, or purported IPG claimants, to
15 compel information from those claimants.

16 Even while those claimants are saying
17 well we're not sure you represent us, and by the
18 way, we're not even sure that we have claims for
19 the proceedings that you're claiming.

20 You will also see evidence that IPG
21 withheld documents from us in discovery that show
22 that IPG, for certain claimants, was actually

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1 terminated.

2 We hope, between our written
3 objections and our presentation that you will
4 find that IPG's claimants are not entitled to a
5 presumption of validity.

6 And even if the presumption were to
7 somehow apply, the evidence that we intend to
8 present will successfully rebut that presumption,
9 will have demonstrated very clearly all of the
10 basis of on which you could rely on for the
11 dismissal of IPG's claimants.

12 And those basis include, who we intend
13 to show, there were certain IPG claimants that
14 were dismissed in a 2000 through 2003 Cable Phase
15 II proceeding. Those claimants, we don't believe
16 has any evidence supporting IPG's claim that your
17 decision in that proceeding should change.

18 We also have the evidence of claimants
19 that have disavowed IPG, or have terminated
20 somehow, terminated IPG's representation of its
21 claimants.

22 There are also claimants, which we'll

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1 show that IPG produced no documents to support
2 its claim of representation, or a questionable
3 documents about whether or not IPG represents
4 those claimants, such as incomplete emails, or
5 this so-called confirmation of engagement, and
6 the other letters.

7 We also have another category of
8 things that should be dismissed, because IPG
9 claimants, they failed to file their claim, or
10 cannot in some form, or fashion, credibly verify,
11 or validate, their entitlement to rights or
12 royalties.

13 And finally, well, that takes care of
14 our objections to IPG's claims. We also had a
15 second part of our presentation that addresses
16 IPG's objections to MPAA's claims. And as I
17 mentioned, I'm sorry, strike that.

18 So the second part of our presentation
19 will be dealing with IPG's objections, and we
20 will show that, for the most part, those
21 objections have no basis.

22 We will show you that a significant

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1 amount of those objections are Mr. Galaz's own
2 unsupported allegations. We will show that some
3 of the objections are not backed by any
4 documentary evidence.

5 We will show that some of the
6 documents they produced in support of the
7 allegation are highly questionable documents and
8 they're not admissible at all.

9 And we will show that some of the
10 allegations in their objection, they're just
11 flatly untrue. And we hope that at the end of
12 your deliberations that you will find our
13 evidence to be credible, be useful, to be
14 supportive, both in terms of the objections that
15 we have against IPG's claims, and our rebuttal of
16 the challenges that IPG has made against MPAA's
17 claims. And with that, I will conclude my
18 remarks. Thank you very much.

19 JUDGE BARRETT: Mr. Olaniran. Mr.
20 Boydston?

21 MR. BOYDSTON: Thank you. Good
22 morning. I'm pretty much just going to try and

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1 give a roadmap. There's been a lot of briefing
2 you've already seen, there will be a lot of
3 briefing after this, and there's a lot of
4 documents you've been given.

5 It's our goal and our belief that what
6 we will be doing here, I think, like Mr. Olaniran
7 described they will be doing here, is getting the
8 evidence in and giving a brief description, and
9 then essentially giving it to you to go over in a
10 more contemplative manner.

11 There will be some argument and things
12 like that that actually I think that really, the
13 way we've tried to set this up, from our
14 perspective, is simply give you the tools to make
15 the decision.

16 In this regard, we have attached as
17 exhibits a lot of documents. In the 2000, I'll
18 go back to the 2000 and 2003 proceeding just for
19 a moment.

20 In that proceeding, frankly, I think
21 we made some mistakes in that we did not get in a
22 bunch of the evidence we needed to get in, for a

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1 variety of reasons, some of them organizational,
2 some others.

3 We're not going to make that mistake
4 this time, but we have been, if anything,
5 over-inclusive in the exhibits that we've
6 submitted to you ahead of time, and we will be,
7 you know, admitting those and not going into
8 detail on each one, but leaving that for
9 argumentation, or rather, for you to look at in
10 conjunction with our post-hearing briefing and
11 things like that, so that we can get this stuff
12 in.

13 As you know, from reviewing these
14 documents, there are a lot of attacks on a lot of
15 individual claimants about IPG's and programs of
16 IPG's, and they are voluminous and they're
17 numerous.

18 We have documentation to prove that
19 IPG had the right to make all these claims, but
20 it takes a bit of running through, it's a paper
21 chase to chase all that down and find each of
22 those documents.

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1 The frustrating thing is, we have them
2 and we didn't really get them in 2000 and 2003,
3 so we're not going to make the same mistake here.

4 To aid you in that, one of our
5 exhibits, Exhibit 115, is a summary of all of the
6 IPG claimants in a chart, an Excel spreadsheet
7 chart that, in a very organized fashion,
8 identifies representation agreements,
9 confirmations, correspondence on a
10 claimant-by-claimant basis that are in the
11 evidence that are in the binders that you have,
12 with Bates Numbers, so that you can go through
13 and say, okay, there's an issue here with Adler
14 Media, and I remember that so and so said this,
15 and so and so said that. But you won't have to
16 then hunt and peck through these thousands of
17 pages.

18 By looking at that exhibit, you can
19 see exactly the Bates Numbers for the documents
20 that relate to it. And I think this will be very
21 helpful. I hope, it's our plan is that it will
22 be helpful for you, in terms of getting through

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1 the paper chase, as I said.

2 Now that is, but that document that I
3 just mentioned, is specific to the MPAA's attacks
4 on IPG. With regard to the SDC's attacks on IPG,
5 I would say it's not quite as intense a paper
6 chase, most of the evidence you will hear, or
7 that will be presented to you in that regard,
8 will be, there will be some documents, you know,
9 establishing IPG's right to make the collection
10 on these claims. There will be a number of
11 documents, also, that are declarations and things
12 like that.

13 Now many of the SDC's attacks are
14 similar, or identical of those that they made a
15 few months ago, made more than a few, they made
16 earlier this year in the '99 Cable proceedings,
17 and essentially the arguments are the same, the
18 rebuttal is the same, and so that will probably
19 be familiar to you when you take a look at it.

20 With regard to our attack on the
21 MPAA's position, it is, at root, our point is
22 that there's not evidence, the MPAA doesn't

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1 provide evidence that it has the right to collect
2 royalties on specific programs.

3 Now, the MPAA does have some materials
4 that it introduced, it's introducing here in this
5 proceeding from, for instance, CBS is one, other
6 programmers here and there. But it is very
7 spotty, and what is said more than the evidence
8 that is presented, is the evidence that isn't
9 presented, and we'll make that clear as we go
10 through.

11 With regard to our attack on the SDC's
12 position, primarily, it revolves around the fact
13 that several entities, including Day Star
14 Television and Billy Graham, withdrew their
15 claims, and yet now, the SDC is trying to
16 prosecute them and collect on them anyway, and we
17 believe that that's not permitted. Once they
18 withdrew, as per the rules, they're gone.

19 That's a fairly straightforward issue
20 and I don't think you're going to have much
21 testimony on it, because the SDC has indicated
22 that they have no objection to the introduction

1 of our documents.

2 So that, generally, is an overview of
3 our position, or what we're going to be doing
4 here, what we're going to be presenting to you.

5 Briefly on the issue about whether or
6 not IPG is entitled to a presumption, we believe
7 we are entitled to a presumption. However, our
8 goal is to leave no question by presenting a
9 document to support our right to collect on every
10 one of our claimants' claims.

11 And so on one hand, I think we ought
12 to be able to win the argument that we're
13 entitled to presumption. But, we're not resting
14 our case on that, we are coming up with a good
15 reason for you to find that we have the right to
16 make these claims.

17 And as I said, it's a bit of a paper
18 chase on the case of the MPAA, but I think we've
19 got it pretty organized that when we're done and
20 you sit down and you look at all this
21 information, it will be clear and you will be
22 able to identify all these specific agreements.

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1 Thank you.

2 JUDGE BARRETT: Thank you. Mr.
3 MacLean?

4 MR. MACLEAN: Thank you, Your Honor.
5 Out of respect for everybody's time, I won't
6 fully rehash the content of our written rebuttal
7 statement and our spreadsheet of claims, I would
8 ask the Judges to accept those as a, sort of,
9 written opening statement, but I won't say only
10 that.

11 The evidence in this case will show
12 that IPG and Raul Galaz, in particular, cannot be
13 trusted. As will be shown, his history of filing
14 placeholder claims, claims without authority,
15 claims where it is doubtful, or dis-proven, that
16 his alleged claimants actually own the relevant
17 copyrights, all of that persists to this very
18 day.

19 We'll be presenting the testimony of
20 Walt Kowalski, the President of Bob Ross, Inc., a
21 victim of IPG's fresh and ongoing fraudulent
22 schemes, as a direct result of IPG's fraud

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1 related to Tracee Productions, which was itself a
2 registered fictitious name, and other fraudulent
3 claims by IPG.

4 As the predecessors, the Copyright
5 Royalty Board were forced to change the rules for
6 identification of claimants in 2001, requiring
7 identification of legal names, as opposed to
8 fictitious names.

9 Yet, IPG flouts that rule. And by the
10 way, this was an advertent expense to other
11 parties. MPAA objected to that rule change on
12 the grounds of burden to the parties to these
13 proceedings.

14 But it was a necessary move, and IPG
15 flouts that rule today, by continuing to proceed
16 based on fictitious names, even as other parties
17 have to take the extraordinary efforts of
18 complying with the Judges' rules.

19 IPG overtly engages in category
20 shopping, to use the term coined by Judge
21 Strickler. And I say overtly, because IPG
22 expressly advises its clients as to how to

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1 categorize their programing to maximize their
2 potential return and switches claimed categories
3 from one proceeding to the next.

4 When challenged on this practice, IPG
5 claims ignorance of its own programing, and then
6 fails to produce programing exemplars, even in
7 the face of an order compelling discovery of
8 programming exemplars.

9 Most importantly, IPG's unabated
10 practice of deception, disruption, and
11 noncompliance with the rules, and its
12 demonstratively false testimony, prejudices the
13 rights of genuine contract-holders with
14 legitimate claims, prejudices the public --

15 MR. BOYDSTON: Your Honor, I object.
16 This is argument.

17 JUDGE BARRETT: Sustained.

18 MR. MACLEAN: Your Honor, at the
19 conclusion of this hearing, we will ask the
20 Judges to dismiss each of IPG's claims,
21 identified in our written rebuttal statement and
22 amended spreadsheet of claimant's challenges, and

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1 we will ask for IPG's disqualification, as a
2 representative of claimants before these
3 proceedings.

4 We will not ask for the dismissal of
5 any innocent claimant demonstrated to have an
6 authorized and valid claim properly categorized
7 in the Devotional category.

8 But just as no court would allow an
9 attorney with a history of fraud and deception to
10 appear before it, so to this body has the
11 authority and should exercise it to regulate and
12 disqualify when appropriate the agents that
13 appear before it. And I'll leave the balance of
14 my time for closing argument.

15 JUDGE BARRETT: Thank you, Mr.
16 MacLean. Mr. Olaniran, you may call your first
17 witness.

18 MR. OLANIRAN: Sure. MPAA calls Mr.
19 Jeff Rovin.

20 MS. PLOVNICK: I'm sorry. Our witness
21 has gone to the restroom. So he'll be in in a
22 bit. We apologize very much, Your Honor.

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1 JUDGE BARRETT: Nature calls. Nature
2 will not be denied. Do you have a time estimate
3 for this witness?

4 MR. OLANIRAN: For my direct,
5 probably, about half-an-hour.

6 JUDGE BARRETT: Okay. Why don't we
7 take our morning recess at this point, 15
8 minutes, we'll get the witness here and we'll be
9 ready to get going. So we'll be at recess for 15
10 minutes.

11 MR. OLANIRAN: Thank you.

12 (Whereupon, the foregoing matter went
13 off the record at 10:15 a.m. and went back on the
14 record at 10:32 a.m.)

15 JUDGE BARRETT: Good morning.

16 Please be seated, all except the
17 witness.

18 WHEREUPON,

19 JEFFREY ROVIN

20 having been called for examination by Counsel for
21 the MPAA, and having been duly sworn, was
22 examined and testified as follows:

1 JUDGE BARRETT: Please be seated.

2 THE WITNESS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. OLANIRAN:

5 Q Good morning, Mr. Rovin.

6 Please state your name for the record
7 and spell it, please.

8 A Jeffrey Rovin, J-E-F-F-R-E-YR-O-V, as
9 in Victor, I-N.

10 Q And what is your occupation?

11 A I'm a writer.

12 Q And how many years have you worked as
13 a writer?

14 A I've supported myself for 43 years.

15 Q And what kind of writing do you do?

16 A I do non-fiction. I do fiction. I do
17 magazine articles, newspaper articles, that sort
18 of thing.

19 Q Could you speak up just a little bit,
20 please?

21 A Sure.

22 Q Thank you.

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1 A Okay.

2 Q And have you published any books?

3 A A hundred and forty and counting.

4 Q Were those books solely authored by
5 you or coauthored?

6 A Roughly 80 percent of them were by
7 myself, and the others were with coauthors.

8 Q Okay. And besides publishing books,
9 what other types of writing have you done?

10 A As I said, I've worked for national
11 magazines, national newspapers. I have written
12 for the World Book Encyclopedia. I have written
13 for television, comic books, various media.

14 Q And what different types of genres
15 have those books covered?

16 A Television history, pop culture, video
17 games, and, of course, novels that have a variety
18 of genres.

19 Q And have any of your writings covered
20 religious subjects or religious matters?

21 A Yes, a number of them. I have written
22 fascinating facts from the Old Testament,

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1 fascinating facts from the New Testament, films
2 of Charlton Heston which contained a number of
3 Biblical epics. I wrote the novels Conversations
4 with the Devil and we just published the first
5 volume of my Earth End Saga, which seeks to
6 present a unified theory of all religion, and I
7 have created the comic book superhero Phoenix,
8 which was a mashup of various Old and New
9 Testament characters.

10 Q And do you have any experience in
11 television?

12 A Yes, I have written many books about
13 television history. I have also sold my own
14 projects to network and to syndicated TV
15 producers. I've worked as a consultant on news
16 programs, on documentaries, on TV comedies, and a
17 variety of other programs.

18 Q And do you have any experience with
19 religious programming in television?

20 A Yes. I worked with Charlton Heston in
21 1997 on his show "Charlton Heston Presents the
22 Bible," for which I was gifted with this Official

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1 Ten Commandments tie.

2 JUDGE BARRETT: Very handsome.

3 THE WITNESS: Thank you. Thank you,
4 Your Honor.

5 BY MR. OLANIRAN:

6 Q Okay. Do you have any other type of
7 media experience?

8 A I worked as a pre-consultant for
9 President Clinton in 1992 and 1996.

10 Q And have you ever been called by a
11 court or a tribunal as an expert witness before?

12 A Yes, roughly 50 to 60 times.

13 Q Okay. And can you describe the nature
14 of the cases on which you have provided expert
15 testimony?

16 A Yes, they were wide-ranging,
17 intellectual property, some fair usage issues. I
18 was involved for over 10 years with the
19 termination of copyright on Superman, that
20 matter. I have worked on cases involving the
21 films Avatar, Kung-Fu Panda, and others.

22 In television, I have worked on cases

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1 involving "My Name Is Earl," which actually had
2 an angelic component; "The Greatest American
3 Hero;" "Battlestar Galactica," and others.

4 Q And you made a reference to
5 intellectual property cases. What specifically
6 within the intellectual property has been this
7 subject matter on which you testified?

8 A Well, it was necessary to have a kind
9 of comprehensive understanding of prior art and,
10 also, the ability to compare and analyze
11 particularly for the extrinsic test, which is
12 where I was able to draw on by experience as a
13 novel writer.

14 Q And do you know that you understand
15 the general subject matter that you have been
16 asked to address in this proceeding?

17 A Yes.

18 Q And what is that again?

19 A I was asked to ascertain whether
20 certain programs fell within the devotional or
21 program suppliers categories.

22 Q Okay. And what in your experience do

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1 you draw on to reach some of the conclusions that
2 you have reached with regard to your testimony?

3 A In virtually every non-fiction or
4 fiction work that I have authored, it is
5 necessary to become very proficient in whatever
6 that's about. And particularly when I wrote the
7 novel Conversations with the Devil, I was looking
8 into alternatives other than exorcism for dealing
9 with the devil, and I came across a Princeton
10 Presbyterian scholar, J. Machen, who was a great
11 influence in the whole devotional issue back in
12 the 1920s. And his thoughts on that were very
13 influential to me.

14 But, again, with the films of Charlton
15 Heston, it was necessary to read the original
16 Ben-Hur and understand the context in which that
17 was created in the 19th century and to see
18 DeMille's original silent film of The Ten
19 Commandments, which was not quite the same movie
20 about spectacle costumes that the more famous
21 remake was.

22 Pretty much everything I have ever

1 done has required this kind of an investigation
2 and understanding.

3 Q And are you a member of any
4 professional organization?

5 A Yes, I actually hold the record of
6 belonging to seven organizations from the Authors
7 Guild to Science Fiction Writers of America,
8 History Writers of America, et cetera.

9 MR. OLANIRAN: Based on his years of
10 experience in the field, I offer Mr. Rovin as an
11 expert in the field of television history and
12 genre as a program.

13 MR. BOYDSTON: Your Honor, may I voir
14 dire?

15 JUDGE BARRETT: You may.

16 VOIR DIRE EXAMINATION

17 BY MR. BOYDSTON:

18 Q Good morning, Mr. Rovin.

19 A Good morning, sir.

20 Q My name is Brian Boydston. I'm the
21 attorney for Independent Producers Group.

22 And I have read your declaration that

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1 you submitted and, obviously, just listened to
2 your testimony right now.

3 I wanted to ask you, do you have any
4 degrees in religion? And I say "degrees"; I mean
5 college degrees, like a doctor of divinity or
6 anything of that nature.

7 A Not even close, sir.

8 Q Do you have any degrees in other
9 subjects?

10 A No, I didn't have the money to go to
11 college.

12 Q Okay. Do you have any formal,
13 anything outside of something like that, do you
14 have any other formal, what you would call formal
15 religious training?

16 A Religious defined as what?

17 Q Well, you're the expert perhaps.

18 (Laughter.)

19 A Okay.

20 Q Good question, though, good question.

21 A Okay.

22 Q Anything that you would consider to be

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1 formal religious training? Why don't we just say
2 that?

3 A Yes, I've studied martial arts for
4 over half a century, and particularly Kung Fu,
5 which is more about spirituality than it is about
6 beating people up. And that has put me in
7 contact with a lot of great philosophical and
8 religious thinkers and also texts that have
9 helped to illuminate by own views.

10 Q Okay. That sounds to me like training
11 and perhaps even education, but informal. Would
12 you agree that's accurate? In other words, you
13 didn't go to a formal class and be taught certain
14 things. This is just something that, in
15 connection with martial arts, you investigated on
16 your own?

17 A No, no, these were very formal classes
18 within the dojos and schools that I attended.

19 Q Okay.

20 A Particularly in Chinatown.

21 Q And those were, they were martial arts
22 classes that had an element of spirituality as

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1 opposed to a religious class that taught Kung Fu
2 on the side? Is that a fair --

3 A That's a fair statement.

4 Q Okay. Now what you're being asked to
5 do here is categorize or really define what
6 belongs in the devotional category and, then,
7 opine as to whether or not these particular
8 programs fall within it, correct?

9 A That's true.

10 Q And so, as a first step, you have to
11 define what the devotional category includes,
12 correct?

13 A Yes.

14 MR. MacLEAN: Objection. It is
15 outside the scope of a voir dire, Your Honor.

16 JUDGE BARRETT: Sustained.

17 MR. BOYDSTON: Your Honor, I
18 apologize. I was just trying to frame my next
19 questions as to what his qualifications are to do
20 just that.

21 JUDGE BARRETT: Okay. Go ahead.

22 BY MR. BOYDSTON:

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1 Q I understand from what you have said
2 that you have substantial experience in many
3 fields of life, but particularly in writing and
4 media and, apparently, Kung Fu as well. What is
5 the basis for your expertise as to whether or not
6 a program has to be -- and I'm using some of your
7 words here -- you say, "In general, a homiletic
8 work ultimately proselytizes a specific point of
9 view that is strongly scripture- or deity-based.
10 By contrast, a secular work generally
11 communicates without advocating a story or
12 stories drawn from a particular religion."

13 And then, you make a distinction
14 between those two, as to one being devotional --

15 MR. MacLEAN: Objection.

16 BY MR. BOYDSTON:

17 Q What is the basis for that? What is
18 the basis for your expertise to make that
19 statement?

20 MR. MacLEAN: Your Honor, this is not
21 a question about, although framed that way, it is
22 not a question about his expertise. He is asking

1 about his opinion, which can wait until cross-
2 examination.

3 JUDGE BARRETT: Sustained.

4 BY MR. BOYDSTON:

5 Q I don't want to know your opinion. I
6 want to know, how is it that you have the basis
7 to make a distinction like that?

8 A In all of the works that I have done,
9 it has been necessary to take a kind of holistic
10 view to our society and our culture. And going
11 back to the 19th century and the great novels,
12 great what I would consider devotional novels,
13 like Ben-Hur, which is subtitled "The Tale of the
14 Christ," like Quo Vadis, which is about the acts
15 of the Apostle Peter, and even The Last Days of
16 Pompeii in which Jesus is almost as important as
17 Vesuvius, and moving, then, into the silent film
18 era, where you had very strongly devotional films
19 that were in response to our society in general,
20 films like Christus or From the Manger to the
21 Cross or, indeed, The Ten Commandments or King of
22 Kings, as opposed to The Passion of Saint Joan or

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1 even Nathan the Wise from 1914.

2 In writing about film history or about
3 literary history, it's necessary to understand
4 the distinctions between these and what makes
5 them endure or what makes them not endure.

6 And again, there were sources, such as
7 the Presbyterian scholar I mentioned, Mr. Machen
8 and his heirs, such as Father Charles Edward
9 Coughlin on the radio, that brought me through
10 the history of radio, which I have also written
11 about, which had, of course, the seeds of what
12 we saw in television in the late forties and
13 early fifties up through the present day.

14 So, it is necessary to understand the
15 entirety of the spectrum in order to focus-in on
16 the questions that we have before us.

17 Q I appreciate your answer. I think a
18 lot of it went beyond the call of my question.
19 But, just getting at the last part of your
20 testimony, which I think did answer the question,
21 it sounds to me like what you are saying is the
22 basis for this has been your own personal

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1 investigation into the subject matter and your
2 own personal education as to the subject matter.

3 A Well, to me, "personal" suggests a
4 subjectivity which I hope I have not succumbed
5 to. In my writings I have always attempted to be
6 objective about these things and seek out as much
7 information as possible.

8 Q You mentioned, both in your direct
9 examination and in response to my question, the
10 Princeton scholar whose last name starts with an
11 "M" which I don't recall.

12 A Machen.

13 Q Thank you.

14 Now, in addition to Mr. Machen, were
15 there other bases for you to try to form a basis
16 for an expert opinion --

17 MR. MacLEAN: Objection.

18 BY MR. BOYDSTON:

19 Q -- other than him?

20 MR. MacLEAN: Objection. Outside the
21 scope of voir dire. This is not about --

22 JUDGE BARRETT: Sustained.

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1 Mr. Boydston, I think you've asked
2 enough. Are you going to object or not?

3 MR. BOYDSTON: Your Honor, I am going
4 to object, but I'm just trying to determine
5 whether or not -- or he gave one scholar as being
6 one source of his expertise. I just want to know
7 if there are others.

8 JUDGE BARRETT: Okay, you may ask that
9 question, and then, I think, you know, you --

10 MR. BOYDSTON: That was the question
11 I tried to ask.

12 JUDGE BARRETT: Okay.

13 THE WITNESS: Okay. If you asked any
14 example that comes immediately to mind, it would
15 be, for example, Sigmund Freud, who wrote Moses
16 and Monotheism, which I read when researching
17 Moses for the book on Mr. Heston.

18 There was also, of course, Strong's
19 Concordance of the Bible, which is necessary
20 reading material, so that you can distinguish
21 between individual words that are used in the
22 Bible.

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1 And, indeed, when I was in Hebrew
2 School, I had learned to read Hebrew, and I
3 understood that the presence or absence of accent
4 marks could influence different words. So, you
5 have to research exactly what the word means in
6 context, such as kill or murder.

7 BY MR. BOYDSTON:

8 Q Have you ever been asked to testify as
9 an expert witness as to categorizing television
10 programs as being either one type of program in
11 one type of category in proceedings such as this
12 or another?

13 A Not that I can recall, no.

14 MR. BOYDSTON: Thank you, Your Honor.
15 I have nothing further.

16 IPG objects to Mr. Rovin as an expert
17 witness in this subject.

18 JUDGE BARRETT: Mr. Olaniran?

19 MR. OLANIRAN: Just in direct response
20 to the objection, Your Honor, Rule 702 does not
21 require a formal outside education in order to
22 qualify as an expert witness. And the only

1 requirement, according to the notes of the
2 Advisory Committee on Rules, an expert can
3 actually qualify by experience. And I think it
4 is very clarifying, Mr. Rovin's testimony and his
5 responses to Mr. Boydston's question, that he
6 clearly is an expert in that field.

7 He understands television and
8 television programming. He has talked about
9 television history, which I believe he is an
10 expert on.

11 And I think he can bring his
12 experience to bear on the questions in this
13 proceeding.

14 MR. MacLEAN: Your Honor, the SDC has
15 no objection to Mr. Rovin being qualified as an
16 expert.

17 JUDGE BARRETT: Thank you, Mr.
18 MacLean.

19 The objection is overruled. The rule
20 to which we can refer requires training,
21 education, and experience, not all three. And
22 certainly, Mr. Rovin has education, training, and

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1 experience sufficient to qualify him as an
2 expert, as the MPAA has requested.

3 MR. OLANIRAN: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. OLANIRAN:

6 Q Mr. Rovin, there are two binders in
7 front of you or right next to you. And I think
8 one of them -- may I approach the witness, Your
9 Honor?

10 JUDGE BARRETT: You may.

11 (Whereupon, the document was marked as
12 MPAA Exhibit No. 335 for
13 identification.)

14 BY MR. OLANIRAN:

15 Q Mr. Rovin, you should have in front of
16 you an exhibit premarked as Exhibit 335. Do you
17 see that?

18 A Yes, sir.

19 Q And what is it?

20 A It is rebuttal testimony of Jeff Rovin
21 dated October 15th, 2014.

22 Q And could you please describe what's

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1 the content of that exhibit?

2 A The contents are my qualifications, my
3 methodology, the materials I was provided with,
4 and my analysis.

5 Q Okay. And this is your, Exhibit 335
6 is the report that you had provided for this
7 proceeding, correct?

8 A It is, yes.

9 Q Okay. And do you declare today that
10 this testimony, this exhibit is true and correct
11 and of your personal knowledge?

12 A Assuming it's all here, yes.

13 JUDGE BARRETT: Just make sure the
14 record is clear; it is Exhibit 335?

15 MR. OLANIRAN: Three, three, five,
16 yes, Your Honor.

17 JUDGE BARRETT: Thank you.

18 MR. OLANIRAN: Thank you.

19 I'll move to admit Exhibit 335, Your
20 Honor.

21 MR. MacLEAN: No objection, Your
22 Honor.

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1 MR. BOYDSTON: No objection, Your
2 Honor.

3 JUDGE BARRETT: Three thirty-five is
4 admitted.

5 MR. OLANIRAN: Thank you.

6 (Whereupon, the document marked as
7 MPAA Exhibit No. 335 for
8 identification was received in
9 evidence.)

10 BY MR. OLANIRAN:

11 Q Mr. Rovin, what specifically were you
12 asked to do for this proceeding?

13 A I was asked to ascertain whether
14 certain programs fell within devotional category
15 or the program suppliers category.

16 Q Okay. And preparation for reaching
17 the conclusions that you have reached, did you
18 review any materials in connection with the
19 assignment?

20 A Yes. I was provided, Your Honors, we
21 have a list of 105, I think, programs that I was
22 told were cross-claimed by IPG. I was provided

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1 with 13 DVDs, with the redacted testimony of Dr.
2 Brown, and also, with the June 18th, 2014 Order.

3 Q And --

4 JUDGE BARRETT: I'm sorry, the June
5 18th, 20-- --

6 THE WITNESS: '14 Order.

7 JUDGE BARRETT: Order? Oh, thank you.

8 THE WITNESS: Yes. That was in the
9 '09 cable distribution.

10 MR. OLANIRAN: Okay. Thank you.

11 BY MR. OLANIRAN:

12 Q And did you review any testimonies
13 prior to writing your report?

14 A Only the redacted testimony of Dr.
15 Brown.

16 Q Okay. All right. And you mentioned
17 devotional programs. You understand that there
18 is a devotional programming category within the
19 context of this proceeding, correct?

20 A Yes.

21 Q Okay. And what is your understanding
22 of the definition of devotional programming?

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1 A Within these proceedings, it is
2 primarily religious-themed programming.

3 Q And in providing the report that you
4 have provided, how did you approach making a
5 determination as to which program category the
6 titles, the works that you looked at --

7 A Well, first, we had, of course, the
8 three-part definition which I used. And within
9 that, I went back to what has been a systemic
10 kind of a standard, yardstick, since the 1920s,
11 for homiletic, proselytic, and evangelistic
12 evaluation for devotional material that Mr.
13 Machen was basically the creator of.

14 Q Okay. And to have to get back a
15 little bit to those three words that you
16 mentioned. You mentioned proselytic, homiletic,
17 and evangelistic?

18 A Yes.

19 Q Okay. Let's talk first about what you
20 mean when you say "proselytic".

21 A Proselytic is advocating a particular
22 religious view.

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1 Q And what's homiletic?

2 A Homiletic is commentary on scripture.
3 And evangelistic is promoting a particular deity.

4 Q And how does that influence your
5 analysis of a particular work? I mean, what is
6 the significance of those three components in
7 terms of deciding whether a work belongs in one
8 place or another?

9 A It's necessary to understand the
10 context of what on the surface would seem to be a
11 slam-dunk. For example, the presence of Jesus or
12 any comparable figure or the presence of angels
13 or any kind of traditionally-religious
14 references, which may, indeed, have a religious
15 connotation, but not always.

16 Q And so, if something is proselytic, is
17 it that it tends to be more devotional or not?

18 A Well, absolutely. Those three terms,
19 homiletic, proselytic, and evangelistic, are for
20 me the watermarks of devotional programming.

21 Q Okay. And were you provided with all
22 the works that -- you mentioned that you were

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1 provided with the 105 DVDs?

2 A No, 105 --

3 Q I'm sorry, 105 titles?

4 A Titles, yes.

5 Q I'm sorry. And those were the titles
6 that were represented to you are the titles
7 claimed by IPG, correct?

8 A Correct.

9 Q And did you evaluate the entire 105
10 titles?

11 A I did not.

12 Q All right. And why not?

13 A I was provided with 13 DVDs, of which
14 I found only eight matches on the cross-claimed
15 list. So, those were the ones I analyzed.

16 Q So, of the 105, you only found eight
17 of the 15 DVDs that you were provided with that
18 matched titles on the 105 list?

19 A Yes, sir.

20 Q And you, then, went ahead and
21 evaluated the eight works, correct?

22 A That's right.

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1 Q Okay. And now, is it necessary to
2 watch the DVDs to actually have an opinion about
3 whether or not a work is devotional or in some
4 other category?

5 A Absolutely.

6 Q Now why do you say that?

7 A Because, as I said, you can tick off
8 any number of elements. For example, if I were
9 to say that Jesus, Moses, Krishna, Buddha,
10 Mohammed, and John Smith were all in one
11 particular program, you might think, well, that
12 certainly sounds religious, but it is an episode
13 of South Park, which is decidedly not religious.
14 So, you really have to see it in order to make
15 that determination.

16 Q South Park is actually a religion for
17 some.

18 (Laughter.)

19 And based on your evaluation of those
20 eight titles, along with the materials that you
21 reviewed in connection with your preparation,
22 what was your conclusion as to the eight titles

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1 that you evaluated?

2 A Of the eight, one passed the threshold
3 of devotional.

4 Q And could you turn to page, beginning
5 on page 9 of Exhibit 335, and could you tell us
6 the disposition of each of the titles that you
7 reviewed?

8 A Yes. The first is "Christmas Is,"
9 where despite the fact that children are reading
10 a book about Jesus' birth, it does so in a purely
11 historic manner, which not only makes it not
12 devotional, but it reminds me of the experience
13 that I had on the Heston program, where there was
14 a battle between producers to include scripture
15 or history and how to blend them. And they were
16 clearly very different animals at that time and,
17 also, here as well.

18 Q And could you run through the rest of
19 the titles, please?

20 A Sure. "Easter Is," again, it hasn't
21 got an ecclesiastical agenda, denominational.
22 So, that would fall under the secular banner,

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1 which is when you have education and history with
2 a neutrality, where you have spirituality but
3 without an agenda.

4 And I would say the same thing for
5 "The Little Shepherd," which despite the quoting
6 from the 23rd Psalm, lacked the other elements
7 that made it devotional.

8 "On Main Street," that was, again, a
9 person on the street interview program about
10 angels, about the theory of angels. And that was
11 not devotional.

12 "Red Boots for Christmas," as I say
13 here, it was essentially A Christmas Carol retold
14 with allusions to God, Jesus, and the Nativity.
15 There were carols.

16 "The City that Forgot About
17 Christmas," again, featuring the family from
18 Christmas, is. There is no scripture. Oh, and
19 it was about the "Santafication" of Christmas,
20 which, again, some people would see as inherently
21 spiritual, putting Christ back in Christmas, but
22 it doesn't contain those other elements that are

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1 necessary to make it devotional.

2 Again, "Stableboy's Christmas" was
3 basically a history that was set at the time of
4 Jesus.

5 And finally, the "Puzzle Club's Easter
6 Adventure," about kid detectives, of all of
7 those, kid detectives who ultimately realized
8 that God loves them.

9 Ultimately, "The City that Forgot
10 About Christmas" was the one that I felt was
11 sufficiently devotional. And again, as I say
12 here, it follows the template of David and
13 Goliath, which in 1960 was produced by the
14 Lutheran Church, and it always had a parable, in
15 essence. The narrative was a parable. There was
16 always scriptural quotes, and then, there was a
17 homiletic evaluation of those quotes.

18 Q Thank you, Mr. Rovin.

19 MR. OLANIRAN: Your Honor, those are
20 all the questions I have. Thank you.

21 JUDGE BARRETT: Thank you.

22 Mr. Boydston?

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1 MR. BOYDSTON: Thank you.

2 CROSS-EXAMINATION

3 BY MR. BOYDSTON:

4 Q Mr. Rovin, when one is telling a
5 story, whether it be writing or a TV show or any
6 other media, how would you define the theme of a
7 story, if you are able to, in a general sense?

8 A Yes, that is always one of the more
9 slippery aspects of an intrinsic analysis, as you
10 know. The theme would be the heart, I suppose,
11 of what the storyteller is trying to impart.
12 That is separate from the simple progression of
13 plot.

14 Q Okay. The simple progression of plot
15 has an aspect -- themes have an aspect of the
16 progression of the plot, is that accurate? For
17 instance, let's say, if we had a war movie, it is
18 going to be about all kinds of different things
19 about the individual soldiers' lives, et cetera.
20 But the war they are fighting and what they are
21 doing in fighting the war, is that part of the
22 theme? Would that be part of the theme of a

1 movie like that?

2 A The theme of a movie in that example
3 would be, for example, war is terrible. Somebody
4 who has actually been in war will find it more
5 terrible and may also find different themes
6 within that narrative that might not be apparent
7 to another viewer and might not have even been
8 intended by the creator, which is why, again, it
9 is a slippery topic.

10 Q And when you are saying it is a
11 slippery topic, is that, in part, because the
12 idea of theme is somewhat broad in terms of what
13 its complement parts may be?

14 A It's one of those words that requires
15 qualifiers. Sort of like if we talk about gospel
16 or if we talk about -- you know, there are
17 different kinds of gospel. If you talk about
18 religion, I mentioned certain aspects of Chinese
19 tradition and philosophy that are very much a
20 religion. To other people, Greek mythology and
21 Zena, warrior princess, her relation with Zeus
22 might be considered a religion. So, a theme is,

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1 indeed, very subjective.

2 Q Now you were given 13 DVDs, is that
3 correct?

4 A Yes.

5 Q But my understanding is you only
6 reviewed eight of them, is that correct?

7 A Yes.

8 Q And which ones didn't you review and
9 why?

10 A I don't recall the titles. There was
11 one DVD, "Through It All," from Dr. Wilson. The
12 others I don't recall offhand, sir.

13 Q And why was it you didn't review the
14 Willie Wilson DVD "Through It All"?

15 A It was not, to my understanding, part
16 of the TV series.

17 Q Now, with regard to -- I've been
18 looking at your report on pages 5 and 6. And
19 right now, focus specifically at the top of page
20 6. Well, sorry, beginning at the bottom of page
21 7 -- or page 5. I'm sorry.

22 It says, "In short, there is a clear

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1 demarcation between works that are merely
2 reverential, e.g., God is great, Christmas is for
3 celebrating Jesus, and those that directly or
4 implicitly encourage the viewer to embrace a
5 specific religious point of view."

6 Now the last phrase there where you
7 are saying, essentially, that -- well, I think
8 the weight you're -- within the body, the context
9 of the report, what you are saying is that a
10 devotional program is one that would directly or
11 implicitly encourage the viewer to embrace a
12 specific point of view. Is that accurate?

13 A I'm sorry, you're going to have to
14 repeat that.

15 Q Yes. I kind hashed the question.

16 You know, you can see the sentence I'm
17 talking about, correct?

18 A Oh, sure.

19 Q Okay. And in it, you're talking about
20 a demarcation between a program that is merely
21 reverential -- and you give a parenthetical
22 description there -- and one that implicitly or

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1 directly encourages the viewer to embrace a
2 specific religious point of view.

3 My reading of this in context is that
4 that latter condition, if you will, is what you
5 are saying should be in the devotional category?

6 A Yes.

7 Q Okay. And then, at the end of that
8 paragraph, there is a sentence that says, "Naked
9 content, even when there is mention of God,
10 Moses, Jesus, the clergy, or superficial
11 interpolations of scriptural ideas, e.g., the
12 Golden Rule, which has been secularized, despite
13 it appearing in Luke 6:31, do not make a program
14 devotional."

15 That last sentence in conjunction with
16 the one above, what I am getting from that is
17 that you are saying that, even if a program has
18 references to things like Christmas or Jesus,
19 something like that, it will not be devotional
20 unless it is also directly or implicitly
21 encouraging the viewer to embrace a specific
22 religious point of view, is that correct?

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1 A As I understood what you just said,
2 yes, it seems to be correct.

3 Q Okay. So that, it appears to me that
4 the definition that you're advocating for a
5 program to fit within the devotional category is
6 it has to be one that is trying to encourage a
7 viewer to take a religious view, correct?

8 A Yes.

9 Q Okay. And in doing that, I mean, to
10 my mind, that's sending a message to the viewer,
11 this particular religion or this particular
12 religious view is good; adopt it. Is that fair
13 to say?

14 A I wouldn't say necessarily "good". I
15 would say they're saying it's available to you,
16 if you choose to adopt it.

17 Q But it's not just telling a story?
18 It's delivering a message? Is that fair to say?

19 A Yes.

20 MR. BOYDSTON: I have nothing further.

21 JUDGE BARRETT: Mr. Olaniran, anything
22 further?

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1 Oh, I'm sorry, Mr. MacLean?

2 MR. MacLEAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. MacLEAN:

5 Q Good morning, Mr. Rovin.

6 I'm Matthew MacLean. I represent the
7 Settling Devotional Claimants.

8 A Good morning.

9 Q Among the programs that you did not
10 review was, as Mr. Boydston mentioned, Dr. Willie
11 Wilson's "Through It All," is that correct?

12 A I watched it. I did not review it in
13 the text here.

14 Q You didn't undertake an analysis as to
15 whether it was properly categorized in either the
16 devotional category or the program suppliers
17 category?

18 A Correct, I did not.

19 Q And the reason for that is because?
20 Could you explain the reason why you did not
21 categorize it?

22 A I didn't see it on the list of

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1 programs that I had been provided with.

2 Q This particular program, Dr. Wilson's
3 "Through It All," was, in fact, a commercially-
4 produced DVD and purported to be a commercially-
5 produced DVD produced by Willie Wilson
6 Productions, is that right?

7 A I assume so. Okay.

8 Q It did not purport, even purport on
9 its face, to be a broadcast television program?

10 A No. That's correct.

11 Q Without reviewing, without watching
12 the broadcast television program, would you have
13 been able to categorize Dr. Willie Wilson's "Sing
14 Station" or any of the other programs on IPG's
15 list that you didn't have broadcast --

16 A No.

17 Q Why is that?

18 A As I said before, one has to see the
19 program and observe the nuance and the content.

20 Q As an author, you would not judge a
21 book by its cover?

22 A Correct.

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1 Q Now, when you were asked about the
2 presence of a theme in a work of authorship, can
3 there be a distinction between a work's primary
4 theme and other themes present in the work?

5 A Again, art is full of people who have
6 interpreted and reinterpreted and found new
7 meaning in virtually every great work. So, sure.

8 Q A work can have many themes?

9 A It can.

10 Q And many great works that aren't
11 necessarily primarily devotional have devotional
12 themes in them?

13 A Sure. To some people, Ben-Hur is a
14 "Tale of the Christ". As General Lew Wallace,
15 the author, said, "To some people, it is a four-
16 hour melodrama about a chariot race."

17 Q Or perhaps an even better example
18 would be The Ten Commandments, which you worked
19 on?

20 A The Ten Commandments, the 1956 film?
21 Well, I would be hard-pressed to find devotional
22 content there, but okay.

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1 Q Well, it's a reference to a Biblical
2 story, right?

3 A Yes, but it's a reference more to
4 spectacle and costumes than it is to the
5 Deuteronomy.

6 JUDGE STRICKLER: Excuse me. Are you
7 saying you don't any devotional aspect at all to
8 The Ten Commandments movie?

9 THE WITNESS: Oh, I do. I do, but,
10 again, that requires somewhat goodwill on the
11 part of the audience. And I remember a lot of
12 audiences were profoundly moved by The Ten
13 Commandments. But, when you look at it as a
14 whole and apply Mr. Machen's standards, it
15 doesn't really fulfill entirely all of them. I
16 would say that one may be on the cusp, but that
17 depends on the viewer.

18 JUDGE STRICKLER: If it depends on the
19 viewer, are you saying that it is subjective?
20 Some viewers might say, "I get a devotional
21 charge out of this movie. It reaffirms my
22 particular faith in what the Ten Commandments

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1 stand for, as I studied them in school, in
2 religious school, as a child."? And that person,
3 subjectively, finds that it is devotional,
4 primarily devotional in nature; whereas, you say,
5 "I look at it through my own lens and my own
6 background as a writer and I don't see that."?

7 THE WITNESS: Absolutely, Your Honor,
8 in the sense that, again, a lot of these works,
9 not all of them, but a lot of them -- and The Ten
10 Commandments is certainly one -- require the
11 goodwill of the viewer. It requires what you're
12 bringing to the table as a member of the
13 audience.

14 There are others, sticking with this
15 theme of Ben-Hur, for example, with Christ, the
16 redeemer, and the curing of the lepers, and his
17 blood flowing through Golgotha, that is much more
18 overtly devotional.

19 And I would also add that the original
20 silent version of The Ten Commandments is
21 absolutely devotional, which is where my divide
22 comes in, because that was a parable about

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1 corrupt modern life with an extended flashback to
2 the receiving of the Ten Commandments, and how,
3 returning to the modern story, the sinners have
4 to be healed and made better.

5 JUDGE STRICKLER: I suppose my
6 concern, which is the questioning now, is between
7 subjective and objective. I appreciate and
8 respect your opinion on that, but does that mean
9 that your opinion as to what's primarily
10 devotional compared to what the masses or the hoi
11 polloi says is devotional in nature with regard
12 to a particular program should carry more weight?
13 Is that your testimony? Is that your position?

14 THE WITNESS: Well, what I'm saying,
15 Your Honor, is that there's -- and the Court, in
16 its wisdom, defined that as primarily religious-
17 themed works. Because there are people who are
18 going to approach different stories like It's a
19 Wonderful Life, for example, and find
20 spirituality in that.

21 But, in order to categorize something
22 as more objectively devotional, I refer to Mr.

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1 Machen's guidelines once again, largely because
2 they were present at the origin of devotional
3 programming in radio in 1930. I mentioned Father
4 Coughlin before. "The Catholic Hour," "the
5 Lutheran Hour," all of these programs were
6 devotional and, indeed, they banded together to
7 form the Federal Council of Churches to kick out
8 the evangelicals and everyone who didn't conform
9 to a specific denominational vehicle. And that
10 ban took many years to overturn. And then, that
11 conceit moved into television and remained with
12 Bishop Fulton J. Sheen, the first televangelist,
13 remained in place since the early 1950s.

14 JUDGE STRICKLER: Do you consider
15 whether commercial time is purchased with a
16 program of indicative of whether it is primarily
17 devotionally-themed?

18 THE WITNESS: No. The long-form of
19 the fundraisers, if you will, are to me a
20 different animal altogether.

21 JUDGE STRICKLER: Maybe my question
22 wasn't clear. I'm sorry. I'm not talking about

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1 the fundraisers. I am talking about whether or
2 not commercials are placed.

3 If I watch The Ten Commandments or
4 It's a Wonderful Life -- it was on last weekend,
5 as a matter of fact --

6 THE WITNESS: Yes.

7 JUDGE STRICKLER: -- there's
8 commercial interruption. Do you consider whether
9 there's commercial interruption in a program, as
10 to whether or not that tends to show whether it
11 is, in your opinion, primarily devotional in
12 nature or not?

13 THE WITNESS: No, no. As a matter of
14 fact, Cecil DeMille himself made the observation
15 about The Ten Commandments that he heard clicking
16 in the audience during the previews, and he
17 couldn't understand what it was, and then, people
18 would leave. And he realized women were opening
19 their purses to get their handkerchiefs out and,
20 then, walking out. So, they needed a break from
21 the experience before returning.

22 And in many cases, I suppose a

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1 commercial break would be somewhat the same
2 thing. I don't think it influences it.

3 JUDGE STRICKLER: Thank you.

4 BY MR. MacLEAN:

5 Q Coming back to this question of --

6 JUDGE BARRETT: Excuse me.

7 Programs that the producers pay to air
8 would, presumably, not have commercial breaks.
9 They might have breaks.

10 THE WITNESS: Yes, Your Honor.

11 JUDGE BARRETT: Does that change your
12 thought about what would be considered
13 devotional, whether the producer pays to have it
14 aired as opposed to having it sponsored by a
15 commercial sponsor?

16 THE WITNESS: No, Your Honor. It's
17 common, as you know, for programs about Christian
18 life and Christian living to be shown, to have
19 time purchased for those programs. They are not
20 necessarily devotional.

21 And again, I would return to the
22 Gospel music, for example, which is specifically

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1 about that, Christian living, Christian life.
2 And then, you have all the subsets of that, you
3 know, Urban Contemporary, Southern Progressive,
4 et cetera, et cetera.

5 So, once more, something you would
6 have to watch in order to make that
7 determination.

8 JUDGE BARRETT: Thank you.

9 THE WITNESS: Thank you.

10 JUDGE BARRETT: Mr. MacLean?

11 BY MR. MacLEAN:

12 Q Coming back to this question of a
13 primary theme versus other themes, as we have
14 discussed, there could be many themes in a work
15 of authorship, right?

16 A Yes.

17 Q And I think now, although there might
18 be, and different people certainly can perceive
19 different themes differently, but this is
20 something that really exists in authorship, is
21 that right? An author has a theme to a work of
22 authorship?

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1 A You know, there is a line in Superman,
2 the motion picture, and I'm going for the real
3 cultural icons here, the landmarks, where Lex
4 Luthor says, "Some people could look at a gum
5 wrapper and see the history of the universe in
6 it." And they cut to his henchman looking at a
7 gum wrapper in total befuddlement.

8 You can, if you want to, see a theme
9 or a message. There were people who when I was
10 growing up saw 2001: A Space Odyssey and saw in
11 it the secrets to all creation, and there were
12 others who were completely confused.

13 Again, this goes back to the question
14 of goodwill and what you bring to the property as
15 you watch.

16 Q Thank you.

17 MR. MacLEAN: No further questions.

18 THE WITNESS: Thank you.

19 JUDGE BARRETT: Mr. Olaniran?

20 MR. OLANIRAN: No redirect, Your
21 Honor.

22 JUDGE BARRETT: Mr. Boydston?

1 MR. BOYDSTON: Thank you, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. BOYDSTON:

4 Q During your answers to the questions
5 just asked, it seems that there is a fair amount
6 of subjectivity involved here. And what I am
7 referring to is your statements about Ben-Hur,
8 The Ten Commandments, some of the others, that
9 you are saying it depends on what the viewer
10 brings to it. And I think I have an idea of what
11 you mean by that, but could you explicate that?

12 A Yes. Well, we're talking about an
13 individual's personal experience, and we're
14 talking about a much more kind of didactic way of
15 looking at a property and analyzing it, which is
16 why, again, I keep going back to Mr. Machen's
17 guidelines that have endured for over 90 years.
18 Subjectivity is, of course, always going because
19 it --

20 Q Like, for instance, you said that, I
21 think, The Ten Commandments might be devotional,
22 but it depends on -- the viewer has to bring a

1 lot to that. When you say that, do you mean that
2 someone might watch The Ten Commandments and just
3 say, "Gee, this is a fascinating story of a
4 people rising up against their ruler," and get no
5 religious impact out of it; whereas, another
6 person might say, "Oh, this is about believing in
7 God, and if you believe in God, then God will
8 take your side and punish the Egyptians."?

9 A Well, I mean, there are those who will
10 listen to Anne Baxter's saying, "Moses, Moses,
11 you stubborn, splendid, adorable fool," and just
12 get up and walk out, saying, "This is
13 ridiculous." There's absolutely no way for me to
14 quantify and qualify that.

15 Q Okay. Getting back to your testimony,
16 though, which is that it takes something from the
17 viewer with certain programs to determine whether
18 or not devotional or not, it sounds like what
19 you're saying is certain programs might deliver a
20 devotional message to a particular viewer and not
21 to another viewer. Is that fair to say?

22 A No. And again, I'm using the

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1 definition of religiously-themed. A viewer might
2 find religious comfort or uplift in a program
3 that may, in fact, having nothing to do with
4 religion.

5 For an objective analysis of the
6 devotional category, more stringent guidelines
7 need to be applied, largely because of these
8 other issues of subjectivity.

9 Q But you did not attach the DVDs that
10 you reviewed to your report, correct?

11 A That's correct.

12 Q Was there any reason why?

13 A None, sir.

14 JUDGE STRICKLER: May I interrupt for
15 a second, please?

16 MR. BOYDSTON: Yes.

17 JUDGE STRICKLER: You referred a
18 couple of times to Mr. Machen's objective
19 categorization of programming as being devotional
20 or religious in nature?

21 THE WITNESS: Yes.

22 JUDGE STRICKLER: Is he a professor?

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1 THE WITNESS: Yes, at Princeton.

2 JUDGE STRICKLER: Right. I thought
3 you had said that.

4 Did Professor Machen have a particular
5 reason why he was categorizing programs as
6 religiously-themed or not?

7 THE WITNESS: Yes. He was -- I don't
8 know if I have mentioned this -- he was deeply
9 opposed to the prohibition and to Blue Laws and
10 to any attempt to legislate morality. He felt
11 you should not do it, could not do it.

12 He believed that the benefits of
13 divine law should be self-evident, and he charged
14 pastors and clergy of all kind to do that through
15 parable, through scripture, and through homily.

16 And as I said, that was the approach
17 that Father Coughlin adopted when he became the
18 first coast-to-coast preacher, if you will. And
19 I think it is perhaps relevant to note that his
20 first program from Detroit was to denounce the Ku
21 Klux Klan and their cross-burnings, which they
22 maintained were religiously-themed and motivated,

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1 and which he used scripture to decry.

2 JUDGE STRICKLER: So, if I am
3 understanding you correctly, Professor Machen, he
4 identified religiously-themed programming because
5 he wanted to make a distinction between what was
6 overtly religious and what was an intertwining --
7 and correct me if I'm wrong here -- an
8 intertwining of commercialism and religion, for
9 example, such as with the Blue Laws?

10 THE WITNESS: He was not, Your Honor,
11 addressing programming per se. At the time when
12 he was writing, there were, in fact, novels and
13 films, and radio was just starting to come into
14 its own as a medium.

15 No, he was talking about a larger
16 world view because this was a time when the
17 United States was ripe with religion. You had
18 the Scopes Monkey Trial about creationism versus
19 evolution being taught in schools. You had the
20 rise of the Knights of Columbus, which had a lot
21 of people afraid because there were tens of
22 thousands of fraternal foot soldiers for Roman

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1 Catholicism. So, this was very much on
2 America's mind.

3 And he did not believe in combating
4 any of that through legislation or fear, but
5 through ideas. And this was how he codified his
6 ideas.

7 JUDGE STRICKLER: He codified his
8 ideas by trying to make an objective
9 categorization of what was religiously-themed, so
10 religious issues could be tackled within an
11 objective box, not mixed and muddled with other
12 things like prohibition, Blue Laws, and the like?

13 THE WITNESS: That's correct, sir.

14 JUDGE STRICKLER: So, he wasn't trying
15 necessarily to distinguish between TV programs at
16 the time or even radio programs, as you are
17 saying really, but he was trying to distinguish
18 -- he was not trying to distinguish between
19 different types of books that may have been
20 religious or not religious? He didn't want the
21 interjection of religion to areas where he
22 thought religion was not appropriate?

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1 THE WITNESS: He would not have
2 interjected it. He would not have espoused
3 interjecting it in any kind of creative capacity.

4 Again, at that time, there was, you
5 know, because of the Depression in 1929, there
6 was a resurgence of sales for novels like the
7 ones I mentioned, Ben-Hur, Quo Vadis, and The
8 Last Days of Pompeii.

9 And there was also a very separate at
10 that time genre of spiritual novels; for example,
11 The Woman of Andros by Thornton Wilder, which was
12 set before the time of Christ and was a kind of
13 an everyman view of life and afterlife and things
14 of that nature which were not overtly religious
15 at all.

16 So, he was working in kind of a much
17 more separate, segregated environment, if you
18 will.

19 JUDGE STRICKLER: Is there a
20 particular work or works that he has published
21 that are either mentioned in your mentioned in
22 your testimony or cited in your testimony?

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1 THE WITNESS: I didn't cite any of
2 that, and I would be happy to get back to you
3 with ones that I think are relevant.

4 JUDGE STRICKLER: Okay. Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 BY MR. BOYDSTON:

7 Q You made a comment in response to a
8 question about long-form fundraisers, and you
9 said, "But I don't consider long-form
10 fundraisers" -- and then, the answer I think may
11 have gotten cut off.

12 What was the point you were trying to
13 make there or started to make, if you will?

14 A I think I was being asked a question
15 about whether at the time it was purchased --

16 Q Correct.

17 A -- necessarily made something
18 spiritual or not.

19 Q Right.

20 A And I said that that was sort of not
21 relevant.

22 Q What did you mean by "long-form

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1 fundraisers"?

2 A It's where an entity will buy an hour,
3 two hours, whatever, and perhaps have a plug at
4 the bottom identifying, at the bottom of the
5 screen, identifying who they are and what they
6 are. But, then, they will talk about very kind
7 of secular causes, Feed the Children, Help
8 Hurricane Victims, et cetera.

9 Q I see. And your point was that or you
10 were making the point that the fact that you
11 purchased the air time is irrelevant to whether
12 or not the program is devotional?

13 A Correct.

14 Q I see. In your report you made a
15 comment that content alone is not sufficient to
16 determine whether or not a program is devotional
17 or not, correct?

18 A You would have to show me the
19 paragraph. I don't want to --

20 Q Sure. And I didn't bring my copy up
21 here. I'm going to just go grab it.

22 You were discamping a discussion about

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1 Dr. Brown and you were saying that you had a
2 disagreement about Brown in that regard. It is
3 at page 7, above the --

4 A Yes, okay.

5 Q And the sentence was, "These programs
6 help to underscore my belief that Dr. Brown's
7 view of the topic is overbroad and that content
8 alone is not sufficient in broad strokes to brand
9 a show."

10 In saying that content alone is not
11 sufficient, are you saying that, in addition to
12 the content, there has to be something more,
13 something proselytizing, something homiletic, et
14 cetera? Is that what you are saying there?

15 A Well, of course there is content
16 technically. I meant that a log line, an angel
17 comes down to earth and helps his brother with
18 his love life, is something that you really have
19 to look into to see whether that is religious.

20 Q Or whether it is proselytic,
21 homiletic, et cetera, correct?

22 A Exactly.

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1 Q Okay. That may still mean that the
2 theme of that particular program is an angel
3 comes down from heaven, but you're saying, just
4 because the theme of it is an angel comes down
5 from heaven doesn't mean the program is
6 homiletic, proselytic, or -- I keep forgetting
7 the third one.

8 A Yes, evangelistic.

9 Q Evangelistic. Is that correct?

10 A Yes. I wouldn't even call that a
11 theme. That is just, as I said, a log line that
12 you put in TV Guide, when I was a kid. That is
13 really not very informative.

14 Q Well, if there is a production or a
15 piece of media where the main character is an
16 angel, wouldn't it be fair to say that the fact
17 that they're an angel is part of the theme of the
18 story?

19 A No, it's what the angels do that would
20 or could generate the theme.

21 Q But, clearly, the fact that they're
22 angels is an important aspect of the program,

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1 correct?

2 A Yes.

3 Q It's a main part of the story?

4 A That would go under characters.

5 MR. BOYDSTON: Nothing further, Your
6 Honor.

7 MR. OLANIRAN: No redirect, Your
8 Honor.

9 JUDGE BARRETT: Thank you.

10 Will this witness be excused then?

11 MR. OLANIRAN: Yes, Your Honor.

12 JUDGE BARRETT: Thank you, Mr. Rovin.

13 You are welcome to stay, but you may be excused.

14 THE WITNESS: Thank you, Your Honors.

15 (Witness excused.)

16 (Whereupon, the document was marked as

17 MPAA Exhibit No. 308 for
18 identification.)

19 MS. PLOVNICK: Your Honor, before we
20 call our next witness, I want to move the
21 admission of MPAA Exhibit 308 -- that is the
22 Declaration of Gregory Olaniran -- and attached

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1 exhibits 10 through 31. That was filed as a part
2 of our written rebuttal statement.

3 And his declaration statement simply
4 says that these are true and correct copies of
5 documents we received in discovery from IPG.

6 MR. BOYDSTON: Your Honor, we object
7 because there is not a sponsoring witness for
8 this. It is kind of an odd animal because it is
9 a declaration by counsel as opposed to a witness
10 or some other person.

11 And so, I am not sure procedurally,
12 quite frankly, I'm not sure procedurally how this
13 should work. But I simply observe there is no
14 sponsoring witness, and there is supposed to be a
15 sponsoring witness. So, I am a little confused
16 as to how this should proceed.

17 MS. PLOVNICK: Your Honor, the judges'
18 regulations say that no evidence, including
19 exhibits, may be submitted without a sponsoring
20 witness except for good cause shown.

21 Mr. Olaniran is here, and, I mean, you
22 know, he can be a witness and sponsor this, but

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1 that seems like a waste of this Court's time.
2 So, I think good cause would support the
3 admission of this simply as a declaration with
4 documents attached.

5 These are all things that were
6 produced in discovery, and his declaration was
7 submitted more in the nature of the kind of
8 declaration that would be attached to a motion
9 for summary judgment or something along those
10 lines.

11 Also, all of the attachments are IPG's
12 own documents, things that were produced to us
13 that have IPG Bates stamp numbers on them. And
14 it simply says they are true and correct copies
15 of those documents.

16 JUDGE BARRETT: Mr. Boydston, are
17 these not IPG discovery responses?

18 MR. BOYDSTON: They are. We have no
19 objection to their admission in that regard.
20 Frankly, I was, as much as anything else, looking
21 for guidance as to what do you do when there is
22 not a sponsoring witness. I think what Ms.

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1 Plovnick is saying is, okay, if you don't have a
2 sponsoring witness, but there is good cause, they
3 should get in anyway. And I understand her
4 logic.

5 So, I have no objection.

6 JUDGE BARRETT: I'm not sure I
7 understand the logic of the rule, to be honest.

8 (Laughter.)

9 But inasmuch as these are documents
10 that IPG produced, I don't think there is a basis
11 to object to their being admitted.

12 MR. BOYDSTON: And I don't have any
13 objection in that regard. It was just the
14 technical aspect.

15 MR. MacLEAN: No objection from the
16 SDC.

17 JUDGE BARRETT: Anybody want to talk
18 about the technical aspect of that objection?

19 MR. MacLEAN: Your Honor, considering
20 that this is a Board that has found itself not to
21 have subpoena power, when it comes to documents
22 produced by the opposing party, we really have

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1 essentially no choice but to simply submit them
2 into evidence and offer them into evidence. And
3 so, I don't see any basis at all for an objection
4 with respect to that.

5 Beyond that, I think we will just have
6 to address it as they come.

7 JUDGE BARRETT: I certainly hope
8 everyone here, and all of your colleagues in this
9 particular segment of the Bar, will join with us
10 as we slog our way through the regulations and
11 try to make amends for this sort of thing.

12 MS. PLOVNICK: Your Honor, we agree
13 with SDC, and we would welcome the opportunity to
14 participate in that effort with you.

15 JUDGE BARRETT: Thank you.

16 MR. BOYDSTON: And I agree. I agree.
17 This provides a little clarification, I think,
18 for all of us here.

19 MR. MacLEAN: And, Your Honor, I would
20 also add, if the time were to come that the Board
21 chooses to seek to promulgate new rules, we would
22 be very happy to submit public comments on those.

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1 JUDGE BARRETT: I'm sure you would.

2 MS. PLOVNICK: As would MPAA.

3 JUDGE BARRETT: You know, this is not
4 a group that has ever been reticent.

5 (Laughter.)

6 Exhibit 308 is admitted for good
7 cause. Without saying the other rule doesn't
8 apply, I am just going to assign good cause, as
9 expressed by Mr. MacLean.

10 MS. PLOVNICK: All right. Thank you,
11 Your Honor.

12 (Whereupon, the document marked as
13 MPAA Exhibit No. 308 for
14 identification was received in
15 evidence.)

16 MS. PLOVNICK: So, MPAA calls Jane
17 Saunders to the stand.

18 WHEREUPON,

19 JANE SAUNDERS

20 having been called for examination by Counsel for
21 the MPAA, and having been duly sworn, was
22 examined and testified as follows:

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1 JUDGE BARRETT: Please be seated.

2 DIRECT EXAMINATION

3 BY MS. PLOVNICK:

4 Q Good morning, Ms. Saunders.

5 My name is Lucy Plovnick, for the
6 record, and I am counsel for MPAA.

7 Would you please state your -- did you
8 already state your name and spell it for the
9 record? If not, please do so.

10 A I have not and, yes, I will. It is
11 Jane, J-A-N-E, Saunders, S-A-U-N-D-E-R-S.

12 Q Are you currently employed?

13 A Yes, I am.

14 Q Who is your employer?

15 A The Motion Picture Association of
16 America.

17 Q And what is your position at MPAA?

18 A I am the Senior Vice President for
19 Rights Management, Policy, and Relations.

20 Q How long have you been in that
21 position?

22 A In that position, since the end of

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1 2006, beginning of 2007. I have been with the
2 MPAA nearly 18 years.

3 Q And what are your responsibilities?

4 A As the SVP for Rights Management,
5 Policy, and Relations, I supervise two of MPAA's
6 royalty distribution programs, one in Canada, one
7 in the United States. I handle all of the
8 relationships between MPAA and its core members,
9 as well as other producers we represent by
10 contract with what we call CMOs, which are
11 Collective Management Organizations, around the
12 world.

13 Q You just mentioned that you work with
14 CMOs around the world. Do you have any specific
15 ones with which you work?

16 A Yes. I work with AGICOA, which is the
17 largest representative claiming for producers in
18 the field of Cable Retransmission Royalties. To
19 my knowledge, it's the largest one in the world,
20 possibly the only one in the world.

21 I work with EGEDA, which has been
22 mentioned in some of the pleadings here today,

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1 which is a CMO representing the totality of
2 Spanish producers and representing other
3 producers as well in a host of claims for
4 remuneration, including cable retransmission
5 remuneration.

6 I sit on the Board of two Danish CMOs,
7 and I liaise very closely with -- oh, and one
8 more. Sorry. A German Collective Management
9 Organization, oddly with offices in the United
10 States. And I work with a host of other CMOs,
11 essentially, one or more in every country in the
12 EU and beyond.

13 Q So, do you speak any foreign
14 languages, Ms. Saunders?

15 A I do.

16 Q Which ones do you speak?

17 A I speak French, Spanish. I have a
18 working knowledge -- I used to speak Italian
19 pretty well and German -- I have a working
20 knowledge, however, of German and Italian now.

21 Q So, let's talk a little bit about your
22 background and experience. What is your

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1 educational background?

2 A I received my BA from Dartmouth
3 College and my law degree from Emory University
4 Law School.

5 Q Are you admitted to any state Bars?

6 A I am. I am admitted to the State Bar
7 of Georgia as well as D.C. However, I'm inactive
8 in both.

9 Q Okay. Prior to working at MPAA, what
10 did you do?

11 A I was a practicing attorney, an
12 associate attorney. I was a bankruptcy litigator
13 and, then, towards the end of my law career in
14 the private sector, I worked on compulsory
15 licensing matters, including on proceedings
16 before predecessors of this body.

17 Q And which predecessor would that be?

18 A The CRT, Copyright Royalty Tribunal.

19 Q And have you ever testified before the
20 Copyright Royalty Judges or any of their
21 predecessors?

22 A I have never testified in any capacity

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1 whatsoever.

2 Q This is your first time?

3 A This is my first time.

4 Q Okay. Ms. Saunders -- and may I
5 approach the witness?

6 JUDGE BARRETT: You may.

7 BY MS. PLOVNICK:

8 Q You have two exhibit binders there
9 next to you.

10 A Uh-hum.

11 Q So, I am going to direct your
12 attention to what has been premarked as MPAA
13 Exhibits 309 and 310. And I think that one is in
14 the back of that binder, and the other is at the
15 very front of this binder.

16 A Oh, lucky me, two giant binders.
17 Okay. All right.

18 Q Have you found what has been premarked
19 as MPAA Exhibits 309 and 310?

20 A I have.

21 Q Have you seen MPAA Exhibits 309 and
22 310 before?

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1 A Yes. They are my direct testimony in
2 each of the proceedings at issue here.

3 Q And speaking just of MPAA Exhibit 309,
4 which proceeding is that testimony for?

5 A The distribution of 2004, 2005, et
6 cetera, through 2009 of Cable Royalty Funds.

7 Q And that is your written direct
8 testimony?

9 A It is.

10 Q What date was it filed?

11 A May 9th.

12 Q And then, looking at MPAA Exhibit 310,
13 what proceeding was that filed in?

14 A The distribution of 1999 through 2009
15 Satellite Royalties, also filed May 9.

16 Q And there are two appendices to
17 Exhibit 309. Would you please briefly describe
18 what they contain?

19 A Yes. They contain, Appendix A is a
20 list of our represented claimants in each of the
21 royalty years at issue. And then, Exhibit B is a
22 list of MPAA claimed works in each of the royalty

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1 years in issue.

2 Q And does MPAA Exhibit 310 also have
3 appendices containing MPAA's claimant and title
4 lists?

5 A Yes.

6 Q Do you have any corrections to MPAA
7 Exhibits 309 or 310?

8 A No, I do not.

9 Q And do you declare today that MPAA
10 Exhibits 309 and 310 are true and correct and of
11 your personal knowledge?

12 A Yes.

13 MS. PLOVNICK: So, I move to admit
14 MPAA Exhibits 309 and 310.

15 MR. MacLEAN: No objection, Your
16 Honor.

17 MR. BOYDSTON: No objection.

18 JUDGE BARNETT: 309 and 310 are
19 admitted.

20 (Whereupon, the above-referred to
21 documents were received into evidence
22 as MPAA Exhibits Nos. 309 and 310.)

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1 MS. PLOVNICK: Thank you, Your Honor.

2 BY MS. PLOVNICK:

3 Q Ms. Saunders, are there any
4 differences between your cable testimony and your
5 satellite testimony in these proceedings?

6 A Yes, there are.

7 Q What are the differences?

8 A Well, the programs that would be --
9 the claimants and the programs in each of the
10 Exhibits A and B, respectively, of 309 and 310
11 will have differences from royalty year to
12 royalty year.

13 Q Why?

14 A Because different claimants claim in
15 each royalty year and in each royalty fund year
16 to year, different works are retransmitted, and,
17 therefore, claimed by those claimants, and of
18 course there are different rules for
19 compensability of programs in the cable and the
20 satellite funds under the relevant Copyright Act
21 sections.

22 Q And with regard to satellite

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1 programming, what is the one difference that
2 might come to mind?

3 A The key difference is that for
4 satellite royalties network programming is
5 compensable, whereas in cable, under Section 111,
6 it is not.

7 Q Are there any MPAA-represented
8 claimants that are cable-only claimants or
9 satellite-only claimants?

10 A Yes, there are. For example, the
11 Canadian Broadcasting Corporation is a cable-only
12 claimant.

13 Q They don't file satellite claims?

14 A No. Not yet.

15 Q So who does MPAA represent in this
16 proceeding?

17 A We represent a wide variety, a large
18 cross-section I would rather say, of producers
19 from our core studio numbers, our six core studio
20 members, all the way to -- through small
21 independent producers, my favorite being Alex
22 Paen of Animal Rescue. No offense to any other

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1 claimants here present.

2 Q Does MPAA also represent non-team
3 sports?

4 A We do. We represent non-team sports,
5 and in terms of works --

6 Q Just give me an example, like for --
7 maybe like PGA Tour, is that --

8 A Oh, yes. PGA Tour Classic, yes.

9 MR. MacLEAN: Objection. Leading.

10 MS. PLOVNICK: Sorry.

11 JUDGE BARRETT: That's sustained but
12 allowed. Go ahead.

13 BY MS. PLOVNICK:

14 Q So but MPAA also represents the
15 copyright owners of non-team sports, is that --

16 A Yes. Oh, yes. Yes, we represent the
17 copyright owners for a variety of works, a very
18 diverse variety of works -- movies, syndicated
19 series, non-team sports programming, talk shows,
20 specials.

21 Q So you mentioned that the list of
22 MPAA-represented claimants and titles in your

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1 testimonies are broken down by royalty year. Why
2 is that done?

3 A Because different claimants claim in
4 different royalty years, depending on whether
5 they have a work that has been retransmitted for
6 a claimant that year. A compensable work, I
7 should say.

8 Q Does MPAA file royalty claims?

9 A No, we do not.

10 Q Who files MPAA's claims?

11 A Our individual claimants file royalty
12 claims either in their capacity as owner or
13 representative. They file joint -- sorry, we
14 have agents who file joint claims. We represent
15 agents who file joint claims.

16 Q Approximately how many claimants does
17 MPAA represent each year?

18 A We represent approximately 4,000
19 claimants in each royalty year.

20 Q Now, does MPAA represent each of those
21 4,000 claimants directly?

22 A No. We only represent -- we have

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1 about 100 direct representations, and that number
2 is rounded out by the number of joint claimants
3 or the claimants represented by our joint
4 claimants.

5 Q So does MPAA's representation
6 agreement with its claimants, the specific
7 agreement, does it authorize MPAA to represent
8 the interests of entities appearing on joint
9 claims?

10 A It does.

11 Q And what are the general requirements
12 for a party to become an MPAA-represented
13 claimant?

14 A To become an MPAA-represented
15 claimant, a party has to have filed a claim, a
16 valid claim, with the Copyright Office in the
17 relevant royalty year. They have to have a
18 representation agreement with us, and I think
19 they have to be -- they have to be an authorized
20 owner or representative of a work that is being
21 claimed.

22 Q Do they also have to provide MPAA with

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1 a copy of the claim as filed?

2 A Oh, yes. Of course.

3 Q Were those requirements in place for
4 the 2004 through 2009 cable and 2000 through 2009
5 satellite royalty years?

6 A Yes, they were.

7 Q For the years in question, how did
8 MPAA assure itself that its claimants are
9 entitled to royalties for any particular title?

10 A We have a certification process
11 whereby claimants certify their entitlement to
12 claim individual specific programs.

13 Q What information is typically included
14 in a title certification?

15 A The name of a claimant, the capacity
16 in which they file, whether individually or as an
17 agent representing the rights at issue, so the
18 name, the capacity in which they are filing, the
19 fact that they have filed a valid claim with the
20 Copyright Office, and attached to each of our
21 certifications of entitlement is a list of the
22 programs that has been claimed by the respective

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1 claimant.

2 Q And who would sign the certification
3 that would be submitted to MPAA?

4 A It would be the owner or the
5 authorized representative of the owner.

6 Q Were all of the titles listed on
7 Appendices B to MPAA Exhibits 309 and 310 subject
8 to your certification process?

9 A Yes, they were.

10 Q All right. Now, Ms. Saunders, I would
11 like to ask you a few questions about the records
12 that MPAA maintains related to the certification
13 process you just described. For the royalty
14 years at issue in this proceeding, which are, as
15 I said just a few minutes ago, 2000 to 2009
16 satellite and 2004 through 2009 cable, which is
17 for the Program Suppliers category, does MPAA
18 maintain an electronic database for its
19 certifications?

20 A No, we do not.

21 Q Can you explain to the Judges why
22 MPAA's records for that time period are not

1 electronic?

2 A Yes. For 30 years, the same
3 individual, Marsha Kessler, who reported to me
4 for only a brief portion of nearly those 30
5 years, was in charge of this program and our
6 claimants and our certification process. She
7 kept meticulous but hard copy records of all of
8 her claimants and their claims.

9 Should I go on to say that --

10 Q So at any point in time, did you --
11 was there ever a point in time where MPAA decided
12 to create an electronic database or --

13 A Yes. Yes. When I became Ms.
14 Kessler's supervisor at the beginning of 2007, I
15 found it in -- I thought it was the better course
16 of wisdom to allow her to continue to manage the
17 program in the way that she had, given her
18 sterling reputation amongst our claimants and her
19 meticulous work habits and her long years of
20 experience.

21 However, as when she -- when she
22 retired, which was in 2010, I directed my staff

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1 at the MPAA to embark on a mission to create an
2 electronic database for our program. And we
3 invested almost two years of time and quite a lot
4 of money creating such a database, which exists
5 as of royalty year 2010 and subsequent royalty
6 years.

7 Q Are the royalty years at issue in this
8 proceeding covered by that database?

9 A No, they are not.

10 Q At some point in this proceeding, did
11 the Copyright Royalty Judges issue an order
12 requiring MPAA to create an electronic file
13 providing information taken from MPAA's paper
14 certifications?

15 A Yes, they did.

16 Q And what, if anything, did you do in
17 response to the discovery order issued by the
18 Judges?

19 A I directed my counsel to create an
20 electronic record, basically a compendium of the
21 information that we have on our -- on the
22 certification reports, for each of the relevant

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1 royalty years.

2 Q Let me direct your attention to what
3 has been premarked as MPAA Exhibit 333. That's
4 in Volume 2.

5 A Yes. I'm going to get rid of
6 Volume 1, if that's okay with you. 333?

7 Q MPAA -- premarked as MPAA Exhibit 333.

8 A Okay. Ah, yes.

9 Q Have you seen this document before?

10 A I have.

11 Q And what is it?

12 A This is a communication or a letter
13 from my counsel, Greg Olaniran, to IPG's counsel,
14 Brian Boydston, instructing or advising him that,
15 pursuant to the order of the Board, we were
16 providing a file -- I guess two files of -- in
17 Excel, two Excel files, containing the results of
18 the certifications that we have for each of the
19 royalty years, that MPAA had.

20 MS. PLOVNICK: I'm going to move to
21 admit MPAA Exhibit 333 into evidence.

22 MR. BOYDSTON: No objection, Your

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1 Honor.

2 MR. MacLEAN: No objection, Your
3 Honor.

4 JUDGE BARRETT: 333 is admitted.

5 (Whereupon, the above-referred to
6 document was received into evidence as
7 MPAA Exhibit No. 333.)

8 BY MS. PLOVNICK:

9 Q Ms. Saunders, looking at MPAA Exhibit
10 333, does it mention the name of the electronic
11 file that MPAA's counsel created for IPG?

12 A It does. Maybe there is only one.
13 I'm mistaken. So actually Owner Title 2000-2009,
14 so there would have been only one.

15 Q So, and can you please say the name of
16 that file?

17 A Oh, I'm sorry. So MPAAOwnerTitle
18 2000-2009 (6308249).xls.

19 Q So, and now let me direct your
20 attention to what has been premarked as MPAA
21 Exhibit 334, which is the next tab in the binder.
22 Have you seen this before?

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1 A Yes. Yes, I have.

2 Q And what is MPAA Exhibit 334?

3 A This is an extract of a page of the
4 electronic file that MPAA created at its own
5 expense to assist IPG in this proceeding pursuant
6 to the Board's order.

7 MS. PLOVNICK: I'm going to move to
8 admit MPAA Exhibit 334 into evidence.

9 MR. BOYDSTON: No objection.

10 MR. MacLEAN: No objection.

11 JUDGE BARRETT: 334 is admitted.

12 (Whereupon, the above-referred to
13 document was received into evidence as
14 MPAA Exhibit No. 334.)

15 BY MS. PLOVNICK:

16 Q Now, Ms. Saunders, you testified
17 earlier that MPAA has representation agreements
18 with its claimants. Are you aware that IPG has
19 raised questions about whether MPAA represents
20 certain claimants in connection with these
21 proceedings?

22 A Yes, I am.

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1 Q How did you become aware?

2 A Well, I think that I became first
3 aware in the prior proceeding involving 2000 to
4 2003 cable royalties, and IPG had questioned our
5 entitlement to -- or our representation of
6 certain claimants. And then I have seen several
7 motions and documents filed in this proceeding in
8 which those challenges have been made again, and
9 I most recently saw challenges raised by IPG in
10 their written rebuttal statement.

11 Q When you reviewed IPG's filings, in
12 particular the list of claimants that IPG
13 purports to represent, what, if anything, did you
14 notice?

15 A I noticed that there were several
16 entities mentioned that I was certain, without
17 looking into it even, that -- off the top of my
18 head, that we represented those claimants.

19 Q Let me direct your attention to MPAA
20 Exhibits 311 through 323. And you can start with
21 311. It has been premarked as MPAA Exhibit 311.

22 A Yes. Yes, these are our collection --

1 or redacted copies of MPAA representation
2 agreements for multiple claimants.

3 Q And since you're flipping through,
4 what has been premarked as MPAA Exhibit 311
5 through 323, are they all MPAA representation
6 agreements?

7 A Yes.

8 Q Are these documents that MPAA
9 maintains as business records?

10 A Yes.

11 Q Did you or someone under your
12 direction retrieve these documents from MPAA's
13 files in connection with discovery in this
14 proceeding?

15 A Yes. My staff and my counsel.

16 Q So please turn specifically to what
17 has been premarked as MPAA Exhibit 311, and look
18 at the last page. What MPAA claimant is this
19 agreement with?

20 A This is with our claimant known as
21 Screenrights, the Audio-Visual Copyright Society
22 of Australia.

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1 Q And is your signature on that page of
2 the document?

3 A It is.

4 MS. PLOVNICK: So I'm going to move to
5 admit MPAA Exhibit 311 into evidence.

6 MR. BOYDSTON: Your Honor, we object
7 because it has been heavily redacted. I also
8 observe redaction should be unnecessary to the
9 extent that this is marked Restricted. We do
10 have a protective order in place. The redaction
11 makes the document not complete, and, frankly, it
12 cannot be completely interpreted in its redacted
13 form. I don't know why it is redacted, since
14 it's -- we have a protective order.

15 JUDGE BARRETT: Mr. MacLean, do you
16 want to weigh in?

17 MR. MacLEAN: Your Honor, I have no
18 objection to this exhibit.

19 JUDGE BARRETT: Ms. Plovnick?

20 MS. PLOVNICK: Yes. Your Honor, I
21 would just comment on that briefly to say that
22 IPG moved to compel unredacted copies of these

1 documents in discovery, and the Judges ruled that
2 MPAA was allowed to redact them and did not have
3 to produce unredacted copies.

4 And so these are the documents that we
5 produced to IPG in discovery in this proceeding,
6 as you can see by the MPAA Bates Stamp Numbers on
7 them. The redactions were -- and we gave them
8 our redaction logs, too, in this proceeding, as
9 we're required by the Judges' orders.

10 JUDGE BARRETT: Is that correct, Mr.
11 Boydston? You received redaction logs?

12 MR. BOYDSTON: Yes. But I'd say the
13 redaction logs were -- did not have -- were
14 essentially devoid of content. I mean, all they
15 said was, "Confidential information." They
16 didn't give any description of it.

17 MS. PLOVNICK: That is inaccurate
18 characterization of our redaction.

19 JUDGE BARRETT: Exhibit 311 is
20 admitted. If it's redacted to the point where we
21 can't derive any valid information from it, that
22 goes to the weight I think rather than to

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1 admissibility.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 MPAA Exhibit No. 311.)

5 MS. PLOVNICK: Thank you, Your Honor.

6 MR. BOYDSTON: Thank you, Your Honor.

7 BY MS. PLOVNICK:

8 Q Ms. Saunders, looking at MPAA
9 Exhibit 311, is Screenrights an agent or a
10 copyright owner?

11 A Screenrights is an agent.

12 Q And is there -- does Screenrights
13 typically file a joint claim or an individual --

14 A Yes.

15 Q -- claim?

16 A A joint claim.

17 Q Is there a part of the MPAA
18 representation agreement that covers
19 representation of claimants identified in joint
20 claims?

21 A Yes; there is. It's called Provisions
22 Applicable to MPAA-Represented Claimants Acting

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1 as Agents, Copyright Owners Represented by
2 Agents, and Joint Claimants.

3 Q Ms. Saunders, as a lawyer, you know
4 that Court Reporters are magical, but we often
5 read a lot faster than we speak. So could you go
6 through that again?

7 A Absolutely. And I apologize, Your
8 Honor. I have been accused more than once of
9 speaking too quickly. Provisions Applicable to
10 MPAA-Represented Claimants Acting as Agents,
11 Copyright Owners Represented by Agents, and Joint
12 Claimants.

13 Q And, Ms. Saunders, what numbered
14 paragraphs of the -- of MPAA Exhibit 311 are you
15 looking at there?

16 A Numbers 11 through 14.

17 Q And paragraphs 13 through 14 are
18 redacted, but paragraphs 11 and 12, could you
19 read those into the record, please?

20 A Okay. I'm going to go really slowly.
21 I have a lot of sympathy for you at this moment.

22 JUDGE BARRETT: You don't have to go

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1 any more slowly than you would normally speak.

2 THE WITNESS: Okay.

3 (Laughter)

4 Perhaps than you would normally speak.

5 (Laughter)

6 Okay. "In addition to the obligation
7 arising under paragraph 2H above, paragraph 11,
8 if, for a particular royalty year, claimant filed
9 a claim with the CRB on behalf of itself and one
10 or more other parties ("Joint Claim") --

11 JUDGE BARRETT: Go ahead. You may --

12 THE WITNESS: Okay. Sorry. I'm
13 sorry. I'm really nervous about that I'm
14 speaking --

15 JUDGE BARRETT: You don't have to
16 dictate, just read.

17 THE WITNESS: Sorry. Okay. "This
18 agreement authorizes MPAA to represent all
19 parties named in the joint claim."

20 BY MS. PLOVNICK:

21 Q All right. I can stop you there, Ms.
22 Saunders.

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1 A Thank you, Lucy.

2 Q Okay. Now, Ms. Saunders, please look
3 at MPAA -- what has been premarked as MPAA
4 Exhibits 312 through 323.

5 A Okay.

6 Q Are all of these documents similar to
7 MPAA Exhibit 311?

8 A Yes.

9 Q And just quickly, for the record,
10 let's go through and identify them. Turn to MPAA
11 -- what has been premarked as MPAA Exhibit 312.
12 Look at the last page. What MPAA claimant is
13 this agreement with?

14 A BBC Worldwide of Americas, Inc.

15 Q Look at what has been premarked as
16 MPAA Exhibit 313. What MPAA claimant is this
17 agreement with?

18 A Canadian Broadcasting Corporation.

19 Q And turn to MPAA Exhibit -- what has
20 been premarked as MPAA Exhibit 314. What MPAA
21 claimant is this agreement with?

22 A CBS Broadcasting, Inc.

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1 Q And look at what has been premarked as
2 MPAA Exhibit 315. What MPAA claimant are these
3 agreements with?

4 A Compact Collections Limited.

5 Q Now, look at what has been premarked
6 as MPAA Exhibit 316. What MPAA claimant are
7 these agreements with?

8 A Fintage Publishing and Collection BV.

9 Q Look at what has been premarked as
10 MPAA Exhibit 317. What MPAA claimant is this
11 agreement with?

12 A Fox Entertainment Group, Inc.

13 Q Look at what has been premarked as
14 MPAA Exhibit 318. What MPAA claimant are these
15 agreements with?

16 A Bruce Goodman, the Goodman Group.

17 Q Look at what has been premarked as
18 MPAA Exhibit 319. Which MPAA claimant is this
19 agreement with?

20 A IFTA Collections.

21 Q Look at what has been premarked as
22 MPAA Exhibit 320. What MPAA claimant are these

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1 agreements with?

2 A PGA Tour, Inc.

3 Q Look at what has been premarked as
4 MPAA Exhibit 321. What MPAA claimant is this
5 agreement with?

6 A Philip R. Hochberg.

7 Q On behalf of what entity?

8 A Oh, sorry. Transworld
9 International/IMG.

10 Q And look at what has been premarked as
11 MPAA Exhibit 322. What MPAA claimant is this
12 agreement with?

13 A United States Olympic Committee.

14 Q And look at what has been premarked as
15 MPAA Exhibit 323. What claimant does this
16 agreement cover?

17 A This agreement is signed by Edward S.
18 Hammerman, and it has attached to it a long list
19 of claimants.

20 Q Is Urban Latino TV included?

21 A Yes.

22 Q Is LA TV also included?

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1 A Yes. I think it's -- hold on a
2 second. LA TV Networks, Lationation also is
3 there.

4 MS. PLOVNICK: At this time, I would
5 move to admit what has been premarked as MPAA
6 Exhibits 312 through 323, inclusive, into
7 evidence.

8 MR. BOYDSTON: Your Honor, I raise the
9 same objection as I did with Exhibit 311. These
10 have all been heavily redacted, including
11 essentially the entire portion that deals with
12 conflicting claims in each of these. For the
13 record, I make the objection on this -- all of
14 these exhibits that -- because they are heavily
15 redacted, despite the existence of a protective
16 order. It renders the documents ambiguous to the
17 point that they should be excluded.

18 MR. MacLEAN: Your Honor, I have no
19 objection to this model of presentation for the
20 representation authority for claimants.

21 JUDGE BARRETT: Exhibits -- I'm sorry.
22 Did we start at 312?

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1 MS. PLOVNICK: It's 312 through 323.

2 JUDGE BARRETT: 312 to 323, inclusive,
3 are admitted, noting IPG's objection.

4 (Whereupon, the above-referred to
5 documents were received into evidence
6 as MPAA Exhibits Nos. 312 through
7 323.)

8 BY MS. PLOVNICK:

9 Q So, Ms. Saunders, are any of the
10 agreements in MPAA Exhibits 311 through 323
11 limited in term?

12 A No, they are not.

13 Q Would you characterize them as
14 perpetual?

15 A They would be perpetual. There is a
16 written notice provision of course. Sorry. A
17 written termination provision, but they are
18 otherwise perpetual.

19 Q Does each of the MPAA representation
20 agreements contain language indicating that MPAA
21 represents all claimants identified in joint
22 claims?

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1 A Yes, it does.

2 Q And that language is included in all
3 of MPAA agreements, not just the few that we see
4 here.

5 A It is standard language in our
6 representation agreements, yes.

7 Q All right. Ms. Saunders, you
8 testified earlier that some of the claimants on
9 IPG's list of represented claimants were
10 represented by MPAA. Did you take any action in
11 response to MPAA -- IPG listing MPAA-represented
12 claimants in its case in this proceeding?

13 A Yes, I did. I directed my counsel to
14 contact those claimants and clarify -- in order
15 to clarify whether they would be represented by
16 IPG or by MPAA in these -- in this proceeding.

17 Q Did your attorneys take any actions
18 based on your directions?

19 A Yes. They contacted those claimants
20 and received a series of affidavits and attached
21 documents in reply.

22 Q Now, let me direct your attention to

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1 MPAA Exhibits 324 through 332. Have you seen
2 these documents before?

3 A I have. These are the affidavits to
4 which I was just referring.

5 Q Now, let's go through and identify
6 each of these documents for the record. Look at
7 what has been premarked as MPAA Exhibit 324.
8 What is this document?

9 A This is --

10 JUDGE BARRETT: Before we launch into
11 this series of exhibits, we're going to take our
12 noon recess. We will reconvene at 1:00. Thank
13 you.

14 (Whereupon, the above-entitled
15 proceedings went off the record at 12:03 p.m.)

16 JUDGE BARRETT: Ms. Plovnick, are we
17 continuing with Ms. Saunders?

18 MS. PLOVNICK: Yes, Your Honor. We
19 will be continuing with Ms. Saunders' direct.

20 BY MS. PLOVNICK:

21 Q Now, Ms. Saunders, you were previously
22 testifying before our lunch break, and you're

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1 still under oath, and you understand that.

2 A Yes, I understand.

3 Q Okay. Now, when we left off, we were
4 just -- I had just directed your attention to
5 MPAA Exhibit -- what has been premarked as MPAA
6 Exhibits 324 through 332. And I believe you were
7 beginning to identify those documents. So what
8 are MPAA Exhibits 324 through 332?

9 A These are affidavits that were
10 submitted to MPAA to disavow representation by
11 IPG in these proceedings. And to many of these
12 are attached documents and other email exchanges
13 that were not provided to MPAA in discovery.

14 Q So let's just go through and identify
15 each one of these for the record. So what has
16 been premarked as MPAA Exhibit 324, what is that
17 document?

18 A This is an affidavit on behalf of A&E
19 Television Networks that has been provided to us
20 by SVP and Deputy General Counsel Nancy Alpert.

21 Q And is A&E currently represented by
22 MPAA?

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1 A Yes, they are.

2 Q Turn to what has been premarked as
3 MPAA Exhibit 325. What is that document?

4 A This is an affidavit from Vernon Chu,
5 who is the General Counsel of BBC Worldwide
6 Americas.

7 Q And is BBC Worldwide Americas
8 currently represented by MPAA?

9 A Yes, they are. I believe they may be
10 -- no, I'm so sorry. I was going to say they
11 were represented by an agent, but no -- yes, they
12 are represented by MPAA.

13 Q Okay. Turn to what has been premarked
14 as MPAA Exhibit 326. What is that document?

15 A This is an affidavit from Mikhail
16 Borglund on behalf of -- he is the Managing
17 Director of Beyond International Limited. And
18 that entity is represented by MPAA through the
19 agent Fintage.

20 Q Thank you, Ms. Saunders. Turn to what
21 has been premarked as MPAA Exhibit 327. What is
22 that document?

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1 A This is an affidavit from Ron
2 Devillier. Do you need me to spell that?

3 Q Please spell that.

4 A D-E-V-I, double L, I-E-R. And he is
5 78 years old and is the President and CEO of
6 Devillier Donegan Enterprises.

7 Q Is Devillier Donegan currently
8 represented by MPAA?

9 A No, they are not. They are a claimant
10 in the PTV category. Their programming is PBS
11 programming, according to this affidavit.

12 Q So turn to what has been premarked as
13 MPAA Exhibit 328. What is that document?

14 A That is an -- this is an affidavit
15 from Diane -- uh-oh -- Eskenazi, E-S-K-E-N-A-Z-I,
16 who is the President of GoldenFilms Finance
17 Corporation, doing business as GoldenFilms, and,
18 oh, my goodness, American Film Investment
19 Corporation. They are represented by MPAA
20 through IFTA.

21 Q Turn to MPAA -- what has been
22 premarked as MPAA Exhibits 329 and 330. And what

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1 are these documents?

2 A These are affidavits submitted,
3 respectively, by Tim Cook, who is the President
4 and CEO of Pacific Family Entertainment. Pacific
5 Family Entertainment is represented by MPAA
6 through Compact Collections. And that was,
7 sorry, 329. And Exhibit 330 is an affidavit of
8 Juan Dominguez, D-O-M-I-N-G-U-E-Z, who is Vice
9 President of Business Affairs for Pacific. And
10 he is indicating that they are -- that IPG is not
11 authorized to represent their interests, that
12 they are represented by MPAA through Compact.

13 Q Turn to what has been premarked as
14 MPAA Exhibit 331. And what is that document?

15 A This is an affidavit of Edward Safa,
16 S-A-F-A, who is the CFO of LATV Networks. And
17 they are represented by MPAA through Ted
18 Hammerman.

19 Q Is LATV Networks connected to Urban
20 Latino TV?

21 A Yes. Doing business as Latino
22 Alternative Television and having acquired assets

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1 of Urban Latino.

2 Q Now, turn to what has been premarked
3 as MPAA Exhibit 332, and what is that document?

4 A This is an affidavit from Worldwide
5 Pants representative Fred Nigro, N-I-G-R-O, who
6 is the Secretary of Worldwide Pants.

7 Q And is Worldwide Pants represented by
8 MPAA?

9 A No. They are not. They're the
10 authority to collect cable -- sorry. The
11 authority to collect retransmission royalties in
12 these proceedings is -- has been assigned to CBS.
13 The right, I should say, to collect
14 retransmission royalties has been assigned to CBS
15 Broadcasting. And, yes, CBS Broadcasting is
16 represented by MPAA in these proceedings.

17 Q Ms. Saunders, each of these affidavits
18 which we have been discussing, which are marked
19 as MPAA Exhibits 324 through 332, were they
20 previously filed with the Judges as a part of
21 MPAA's written rebuttal statement?

22 A Yes, they were.

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1 MS. PLOVNICK: All right. I'm going
2 to move to admit MPAA Exhibits 324 through 332,
3 inclusive, into evidence.

4 MR. BOYDSTON: Your Honor, first, just
5 dealing solely with 324, the first one, our
6 objection there is that 324 deals with A&E
7 Broadcasting. That's not the right term -- A&E
8 Television. IPG is making no claim on behalf of
9 A&E in this proceeding, and we made that clear in
10 our paper, so I don't see what the relevance is.
11 We are making no claim for it. There is no
12 reason why we need to address it.

13 JUDGE BARRETT: In any year?

14 MR. BOYDSTON: No. Not in any year in
15 this proceeding, no.

16 MS. PLOVNICK: Your Honor, if I may
17 respond, A&E was included in IPG's claims for
18 1999 through 2005 cable and satellite. A&E was
19 also listed in IPG's petition to participate in
20 this proceeding for both the cable and satellite
21 before they were consolidated.

22 This document also goes to

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1 credibility, and the documents that are attached
2 to the A&E affidavit were never produced in
3 discovery to MPAA either in the last proceeding
4 or in this proceeding. IPG did claim A&E in
5 2002-2003 Phase 2 in their testimony and in all
6 their filings.

7 MR. BOYDSTON: Your Honor, just for
8 clarification, we did not claim A&E in our intent
9 to participate. In the original filings we did,
10 but very carefully. In our intent to participate
11 in these proceedings, we did not include A&E for
12 various reasons, including the fact that they had
13 terminated and we made the decision that we
14 weren't going to pursue anything with them. We
15 believe they breached their contract perhaps, but
16 we are not making any claim for them, and that's
17 why we didn't produce anything in discovery,
18 because we are making no claim for them.

19 MS. PLOVNICK: Your Honor, I have a
20 copy of their original petition to participate
21 that we can pull out if you need to see it. But
22 it does list A&E.

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1 JUDGE BARRETT: Okay. Mr. Boydston,
2 did you amend your petition to participate in any
3 way?

4 MR. BOYDSTON: We don't believe they
5 were in it.

6 JUDGE BARRETT: Okay.

7 MR. BOYDSTON: Listen, we make it --
8 I think we can make clear, we have no claim
9 there. We put it in papers we filed with you.

10 JUDGE BARRETT: Okay. Thank you.

11 MR. BOYDSTON: Our written direct
12 statement says there is no claim for them.

13 JUDGE BARRETT: Thank you.

14 MR. MacLEAN: Your Honor, evidence of
15 IPG's filing of false claims in this proceeding
16 before this tribunal is relevant. We have no
17 objection to these exhibits.

18 MR. BOYDSTON: There is no evidence
19 this is a false claim. We're not making a claim.

20 JUDGE BARRETT: Okay. I got it.

21 324 will be admitted, with the
22 knowledge that IPG's counsel currently is

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1 representing that they are making no claim on
2 behalf of A&E, and it might be admitted -- I
3 mean, it is admitted for any other purposes, but
4 you're going to have to show what those purposes
5 are, Ms. Plovnick, by more than simply statement
6 of counsel from the podium.

7 MS. PLOVNICK: Understood.

8 MR. BOYDSTON: Your Honor, if I may,
9 with regard to the other exhibits that they have
10 moved to admit, we object on the grounds of
11 hearsay with an asterisk. And this is kind of
12 similar to this issue about a sponsoring witness.
13 All parties have in the past, and are in this
14 proceeding, presenting declarations for
15 admission.

16 And in most civil courtrooms, a
17 declaration is competent evidence as long as it
18 is not hearsay or otherwise in support of
19 something like a motion for summary judgment.

20 I think what is needed here is a
21 little clarification and a fair and even playing
22 field. And we have had some declarations that

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1 were not admitted previously in other rounds. I
2 think the other parties have, too. All we're --
3 all I'm saying is, if these get admitted, that
4 ought to be fair for everyone.

5 So I object because it's hearsay. By
6 the same token, I think that we all are seeking
7 to admit declarations that are hearsay, and I
8 would just like a little clarification, if
9 possible, as to what the score is going to be on
10 that ground.

11 MR. MacLEAN: Your Honor, I don't
12 believe we are trying to -- seeking to admit
13 declarations that are hearsay. My position --
14 our position --

15 JUDGE BARRETT: A declaration without
16 a witness present would, by definition, be
17 hearsay, Mr. MacLean.

18 MR. MacLEAN: I agree with that, Your
19 Honor, and that's why we have at least made
20 arrangements to have our witnesses present.

21 JUDGE BARRETT: Okay.

22 MR. MacLEAN: However, the rules allow

1 discretion to the Judges, and I think the
2 standard simply has to be some witnesses are more
3 critical for cross-examination than others. I
4 think that's a fact. It requires judgment in
5 some cases, which is why we have Judges, and we -
6 - the SDC has no objection to these exhibits.

7 MS. PLOVNICK: If I may, regulation --
8 in your regulations, the Judges' regulations,
9 Section 351.10 says specifically that hearsay may
10 be admitted, to the extent deemed appropriate by
11 the Copyright Royalty Judges. So hearsay is
12 permissible under the regulations.

13 These documents are -- contain
14 attachments that were not produced to us in
15 discovery, many of them, you know, but they are
16 people that IPG purports to represent, with the
17 exception of A&E, which they are conceding today.
18 The others are listed in their written direct
19 statement, and even A&E, who is on their petition
20 to participate, which my co-counsel has just
21 given me a copy of -- if you would like to see
22 it.

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1 So we would say that these are almost
2 like, you know -- almost declaration of a party
3 opponent to the extent that IPG is purporting to
4 represent them.

5 JUDGE BARRETT: Thank you. In this
6 proceeding, we will permit these declarations to
7 be admitted. Let me back up and say Exhibit 324
8 is provisionally admitted.

9 (Whereupon, the above-referred to
10 document was provisionally received
11 into evidence as MPAA Exhibit
12 No. 324.)

13 And, Ms. Plovnick, if you have some
14 other supporting documentation that you want to
15 offer to establish the other purposes for which
16 the A&E declaration might be admitted, I will --
17 we will take a look at that at that point.

18 Exhibits 325 through 333 are admitted.

19 (Whereupon, the above-referred to
20 documents were received into evidence
21 as MPAA Exhibits Nos. 325 through
22 333.)

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1 And, once again, we see, counsel, why
2 we need a regulatory overhaul.

3 MR. BOYDSTON: Your Honor, I think it
4 was -- that they moved for -- through 332, not
5 333.

6 JUDGE BARRETT: Oh, I beg your pardon.
7 You're right.

8 MS. PLOVNICK: 333 is already
9 admitted.

10 JUDGE BARRETT: 333 was already
11 admitted, so --

12 MR. BOYDSTON: Right.

13 JUDGE BARRETT: Thank you.

14 MS. PLOVNICK: So, Your Honor, I --

15 JUDGE BARRETT: We don't have our
16 record in front of us. So if you have something
17 from the record that you would like to --

18 MS. PLOVNICK: I do, Your Honor, and
19 I'm just trying to figure out what number I
20 should -- it was -- this document that I'm going
21 to -- is a copy of IPG's petition to participate
22 in Phase 2 proceedings, Docket Number 2012-07 CRB

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1 SD 1999 through 2009. And I think that MPAA's --
2 the last number we already premarked was 352, so
3 I will mark this as MPAA Exhibit 353 for
4 identification purposes.

5 (Whereupon, the above-referred to
6 document was marked as MPAA Exhibit
7 No. 353 for identification.)

8 And I guess, may I approach the
9 witness?

10 JUDGE BARRETT: You may.

11 BY MS. PLOVNICK:

12 Q Ms. Saunders, what is MPAA Exhibit
13 353?

14 A This is the IPG's petition to
15 participate in Phase 2 proceedings. I believe it
16 is limited to distribution of satellite royalty
17 funds, distribution of 1999 through 2009
18 satellite royalty funds.

19 Q Could you please flip to the attached
20 exhibit?

21 A There is an Exhibit A attached, and
22 Item Number 3 on IPG's petition to participate,

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1 Exhibit A, is A&E Television Network.

2 Q Thank you, Ms. Saunders.

3 And I would move to admit MPAA Exhibit
4 353 into evidence.

5 MR. BOYDSTON: No objection, and we
6 may have been wrong. We thought it wasn't in
7 there, but we weren't sure.

8 JUDGE BARRETT: Exhibit 353 is
9 admitted.

10 (Whereupon, the above-referred to
11 document was received into evidence as
12 MPAA Exhibit No. 353.)

13 MS. PLOVNICK: Okay. So I have no
14 further questions for this witness at this time.

15 JUDGE BARRETT: Thank you.

16 Mr. Boydston?

17 MR. BOYDSTON: Thank you, Your Honor.

18 MR. MacLEAN: Your Honor, I apologize.
19 My colleagues and I were having a little bit of a
20 debate over lunch that I'm hoping you can help
21 resolve.

22 JUDGE BARRETT: Possibly.

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1 MR. MacLEAN: When we are recording
2 time -- sorry to revisit this issue -- it's our
3 understanding that during a direct examination
4 everything that occurs during the direct
5 examination is charged against the party
6 conducting direct examination, but during cross-
7 examination everything that occurs during the
8 cross-examination is charged against the party
9 conducting the cross-examination. Is that
10 accurate?

11 JUDGE BARRETT: That's the way we're
12 recording it, yes.

13 MR. MacLEAN: Thank you, Your Honor.
14 You just won me an --

15 (Laughter)

16 JUDGE BARRETT: Happy to do that. You
17 can pay me later.

18 MS. PLOVNICK: Your Honor, while
19 counsel for IPG is approaching, may I get a
20 clarification as to whether you -- Exhibit 324,
21 which was provisionally admitted, I would move
22 that it be admitted in full at this time.

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1 JUDGE BARRETT: Yes. Thank you. 324
2 is admitted in full.

3 (Whereupon, the above-referred to
4 document was received into evidence as
5 MPAA Exhibit No. 324.)

6 MS. PLOVNICK: Thank you, Your Honor.

7 THE WITNESS: May I ask a question?
8 What I do with 353?

9 JUDGE BARRETT: Just leave it there.
10 The Court will take care of that at the end of
11 the day.

12 Mr. Boydston?

13 MR. BOYDSTON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BOYDSTON:

16 Q Ms. Sanders --

17 MS. PLOVNICK: Saunders.

18 MR. BOYDSTON: Saunders, thank you.

19 BY MR. BOYDSTON:

20 Q What is your position with the
21 Canadian Copyright Collective?

22 A I am the supervisor for the Executive

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1 Director.

2 Q And what generally do you do in that
3 capacity?

4 A I supervise her execution of her daily
5 duties.

6 Q "Her" being?

7 A The Executive Director of the
8 Copyright Collective of Canada, otherwise known
9 as CCC, whose name is Lucy Medeiros.

10 Q And so does -- do you make decisions
11 or do you oversee decisions that she makes?

12 A I oversee decisions that she makes.
13 I also collaborate on distribution rules and
14 other process rules.

15 Q And where is the MPAA -- where is the
16 MPAA's principal place of business?

17 A It is -- well, we have two, but our
18 principal place of business is in Sherman Oaks,
19 California. The office where I work is in
20 Washington, D.C.

21 Q Do you also work in Sherman Oaks then,
22 or no?

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1 A No. Although I do like to go there;
2 the weather is great.

3 Q Do you work in Canada in connection
4 with your duties with the CCC?

5 A No. I travel to Toronto, but I do not
6 work in Toronto.

7 Q So is it fair to say that from --
8 well, actually, where do you work? I think I
9 know, but --

10 A Well, as I mentioned earlier, I travel
11 around the world dealing with CMOs all over the
12 place. So I work several weeks a year in Europe,
13 sometimes in Geneva, sometimes in the MPAA office
14 in Brussels, sometimes in other countries. I
15 work in Toronto when I am there. I work in
16 Sherman Oaks when I am there. And I work in
17 Washington when I'm here. And I also work from
18 my home location in Keswick, Virginia.

19 Q Understood.

20 A I work all the time, as near as I can
21 tell.

22 Q I'd ask you to take a look at

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1 Exhibit 309, and it's your direct testimony with
2 regard to cable issues, I guess I'd put it. And
3 Appendix A thereto is a list -- I think you
4 testified a list of MPAA-represented claimants.
5 That's what it is titled, correct?

6 A Yes.

7 Q And then Exhibit B is a list of
8 claimed works, i.e. programs, television
9 programs, or things put on television, correct?

10 A Specifically, claimed -- sorry, works
11 claimed by our claimants to which certifications
12 have been given to MPAA.

13 Q Okay. And so for a given year, when
14 MPAA wanted to make appropriate filings with the
15 Copyright Office for copyrights -- copyright
16 royalties like these, I think your testimony was
17 that up through 2010 that duty was performed by
18 Marsha Kessler, correct?

19 A So to correct you, the MPAA does not
20 file claims with the Copyright Office. When our
21 claimants file claims, they provide as-filed copy
22 claims to the MPAA and, yes, until her retirement

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1 in 2010, those certification documents were sent
2 to Marsha Kessler. Yes.

3 Q And Marsha Kessler sent documents --
4 sent certification documentation out to the
5 claimants, correct?

6 A Yes.

7 Q And so what she was doing in doing
8 that job, she would be taking the programs that
9 are in Appendix B and connecting them up with
10 claimants in Appendix A, correct?

11 A Well, I just want to be very precise
12 because I understand that's important when we are
13 having these little conversations. And the list
14 was Ms. Kessler would have sent to our claimants
15 would -- it would not be this whole list to all
16 of those claimants. It would be lists that were
17 geared towards specific claimants, sent to those
18 claimants, and in fact the -- all of the programs
19 on those lists would not necessarily in every
20 royalty year be reflected in this exhibit or
21 these exhibits, because Exhibit B is effectively
22 the same kind of exhibit in each cable and

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1 satellite matter.

2 The claimants that we represent often
3 -- often line out programs that they are not
4 entitled to claim, and, therefore, do not
5 certify.

6 Q Understood. And could I ask you to
7 take a look at what has been marked as -- I don't
8 think it has been entered yet, but it's there in
9 one of the binders before you -- Exhibit 336.

10 A Okay.

11 Q I believe that's the kind of document
12 you were just describing.

13 A Yes. This is a satellite -- calendar
14 year 2000 satellite retransmission royalty
15 certification.

16 Q And it's kind of like a cover letter.
17 It says Certification on the first page, and it's
18 got a place for a signature for the relevant
19 people to sign, and then on the following pages
20 it has lists of programs, correct?

21 A Yes.

22 Q Now, these programs would have come

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1 from a list like Appendix B, right? Appendix B
2 to Exhibit 309 that we were looking at before in
3 the other binder probably.

4 A I do not know if they would have come
5 from a list like Exhibit B. In other words, did
6 it resemble Exhibit B or not? It would have been
7 a list that we received of titles that we
8 received or that Marsha received from our outside
9 vendor that would indicate the list of
10 programming attributable to this claimant, which
11 is ABC Family Worldwide, otherwise known as Fox
12 Family Worldwide.

13 Q Okay. And the outside vendor is what
14 I want to explore, but let me put this all in
15 context. Let's go back to Exhibit 309,
16 Appendix B, which is the list of works. And for
17 -- the first grouping is for 2004 cable. My
18 understanding is that what Marsha Kessler would
19 do is she would go through the -- let's just talk
20 about 2004 for now. She would go through the
21 first page of Appendix B, and the following
22 pages, that list all of the works of 2004 cable.

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1 And then --

2 MS. PLOVNICK: Objection. Oh, I'm
3 sorry. You've got to finish your question.

4 BY MR. BOYDSTON:

5 Q And then what she would do is she
6 would, from that list, pair up those -- match up
7 those programs with particular claimants and send
8 them a communication -- a certification document
9 like Exhibit 336 that they would then send back,
10 correct?

11 A No, that is not correct.

12 MS. PLOVNICK: I was -- I wanted to
13 object. Ms. Saunders testified that she began
14 supervising Ms. Kessler I think in 2007.

15 THE WITNESS: Correct.

16 MS. PLOVNICK: And this is from 2000,
17 and so I just want to object that he is asking to
18 the extent -- and if Ms. Saunders knows the
19 answer, she knows the answer. But to the extent
20 he is asking her about anything that is outside
21 her personal knowledge, I would object.

22 MR. BOYDSTON: I'll use a different

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1 example.

2 JUDGE BARRETT: Sustained.

3 BY MR. BOYDSTON:

4 Q One that is within -- take a look at
5 -- let's use Exhibit 338, which the first pages
6 deal with a certification of entitlement to the
7 year 2007. But just to make sure, page into it
8 about five pages or so and you'll see a
9 certification of entitlement for calendar year
10 2008, which I think would clearly have been your
11 time period, correct?

12 A I believe so. I actually do not
13 recall which specific royalty years I -- Marsha
14 addressed while I was her supervisor at this
15 moment in time, but I'm going to go out on a limb
16 and say that Marsha's process, given that she did
17 it for almost 30 years, was consistent throughout
18 her time at MPAA.

19 Q Okay. And this certification of
20 entitlement for calendar year 2008 as to the
21 first page, on the second page lists a number of
22 programs, correct?

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1 A I'm sorry. The certification -- the
2 cover page is the certification of entitlement,
3 which you actually -- I'm sorry to say this, Mr.
4 Boydston, inaccurately described as a cover
5 letter. It is in fact a sworn declaration or a
6 written declaration, and then attached to that
7 is, yes, in the Exhibit 338, it's a list of
8 titles that were sent to -- oh, this is to
9 Screenrights from Australia, which they have
10 lined various titles as not being claimable by
11 them.

12 Q And what is your understanding as to
13 how Ms. Kessler would come up with the list that
14 appears on the second page of this?

15 A My understanding is that Ms. Kessler
16 in no way came up with the list, as you said. My
17 understanding is that an outside vendor came up
18 with the list, sent the list to Ms. Kessler per
19 claimant per royalty year. She would then to
20 that list attach the certification of entitlement
21 and ask the claimant to certify as to which of
22 the titles, and in what capacity, they were

1 claiming as well as the fact that they had to
2 certify that they had filed a valid claim with
3 the Copyright Office.

4 Q Who is the third party vendor?

5 A In some of the years -- up until
6 royalty year 2009, Alan Whitt of IT Processing,
7 and in 2009 we used an accounting firm by the
8 name of Resnick.

9 Q And what were they asked to do?
10 Obviously, they were asked to come up with this -
11 - a list like this one. But broader than that,
12 what were they asked to do? Were they given a
13 list of works like what we see in Appendix B of
14 309?

15 A No. They would take data that
16 described on a day-to-day basis over a 365-day
17 period all of the programming that was broadcast
18 during that year and make adjustments to rule out
19 wholesale programming that was not in the MPAA
20 repertoire, for lack of a better word. So, for
21 example, devotional programming would be ruled
22 out. And that is how they would generate this

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1 list.

2 Q And then, but --

3 A Or these lists.

4 Q -- these -- and was these lists -- so,
5 in addition to what you just described, they
6 would then go through some sort of a process to
7 divide all the works up and pair them up with
8 individual claimants?

9 A Correct.

10 Q And then they would provide Marsha
11 Kessler or someone at MPAA with all of those
12 separate lists to send with the certification
13 documents, correct?

14 A Yes.

15 Q And in doing so -- well, actually, do
16 you know how they did that? I assume they did
17 that by pulling information and making up a
18 database and then producing it.

19 A I do not know how they did that,
20 actually.

21 Q Do you know how the information was
22 transmitted to the MPAA? Was it just a series of

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1 stacked papers or --

2 A You will be surprised to know that in
3 the earlier years, yes. And by that I mean
4 royalty years up until quite recently, yes, there
5 were enormous -- enormous stacks of paper. And
6 subsequently, when we finally were able to move
7 away from the paper a little bit, we would
8 receive Excel files, or Marsha would receive
9 Excel files.

10 Q Is it not true that Mr. Whitt's entity
11 had this information electronically, printed it
12 out and delivered to MPAA in a paper format? Is
13 that correct?

14 A I know that Mr. Whitt tendered
15 voluminous paper records to us. I have never
16 been to Mr. Whitt's office, and I do not know how
17 he prepared that data. And he is no longer an
18 MPAA consultant.

19 Q Do you know whether or not you or
20 anyone else on the MPAA -- on behalf of MPAA ever
21 made a request of Mr. Whitt for the working files
22 that his company had to perform these processes?

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1 A Yes, we did. When we terminated his
2 services, he tendered us his -- I believe it was
3 his hard drive, and that hard drive was tendered
4 to counsel in preparation for the prior
5 proceedings, and they obviously had it --
6 retained it for this one.

7 Q Are you familiar with what was on the
8 hard drive?

9 A Oh, goodness no. I am not the cyber
10 judge.

11 Q Understand that. Let me ask you to
12 take a look at Exhibit 334. And you testified
13 earlier that this was an exemplar of what was
14 provided to IPG at the request of the Judges,
15 correct?

16 A Yes.

17 Q Okay. Now, it's two columns, one
18 entitled Owner (Agent), and then Title, and tell
19 me what your -- and this may be obvious, but for
20 the record tell me what your understanding is of
21 what the two columns represent.

22 A The claimant name --

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1 MS. PLOVNICK: Objection. I wanted to
2 make sure that he is not asking Ms. Saunders to
3 answer about things that are beyond her personal
4 knowledge.

5 MR. BOYDSTON: Only her personal
6 knowledge. Only what her understanding is.

7 THE WITNESS: Well, when I read it, I
8 see the words Owner (Agent) and Title. And given
9 that I instructed my counsel to prepare an
10 electronic copy, if you will, of information on
11 our certification reports, I'm going to go out on
12 a limb again and say this is an excerpt of that.
13 But we also produced paper copies of all of the
14 certifications for all of the programs we are
15 claiming in this proceeding. And this document
16 will not, by definition, have very valuable
17 annotations such as you see in the Screenrights
18 exhibit we were just looking at where titles are
19 lined out.

20 BY MR. BOYDSTON:

21 Q Right. With regard to -- let me, see,
22 one, two, three, four, five -- no, six -- well,

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1 if you take at the far left, there is a number
2 and it corresponds with the line. Unfortunately,
3 the first number is -- number 1 is Owner, so the
4 fifth actual entity --

5 A I see.

6 Q -- is number 6.

7 A Sure.

8 Q But looking at what is labeled
9 number 6, the fifth one down, it says ABC Family
10 Worldwide is the owner, and the property is
11 Angela Anaconda. Are you aware that Angela
12 Anaconda is actually owned by Decode
13 Entertainment?

14 A I am not aware of that.

15 Q Did you ever -- are you aware as to
16 whether or not the MPAA, either through counsel
17 or not through counsel, as far as you know, ever
18 obtained a declaration from ABC Family Worldwide,
19 Inc. as to whether or not it owned these
20 particular properties?

21 MS. PLOVNICK: Objection. He's
22 calling for speculation here, Your Honor.

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1 MR. BOYDSTON: I'm asking if she
2 knows. She -- maybe she authorized, maybe she
3 said, maybe she didn't. I'm only asking what she
4 knows and nothing further.

5 JUDGE BARRETT: She can -- it's a yes
6 or no. Did you know?

7 THE WITNESS: If the title is in this
8 abstract that was sent to you, then, yes, it
9 would have been certified by that claimant, ABC
10 Family.

11 MR. BOYDSTON: Okay.

12 THE WITNESS: Whether they actually
13 own it or not, I don't know, but they certified
14 to it.

15 BY MR. BOYDSTON:

16 Q Now, with regard -- going down two
17 more to line 8, it refers to Beast Wars being
18 owned by ABC Family Worldwide. Are you aware
19 that Beast Wars is owned by Mainframe
20 Entertainment and Mainframe Entertainment has a
21 contract with IPG? Do you have any familiarity
22 with that?

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1 A No, I do not.

2 MS. PLOVNICK: I object, Your Honor.
3 This calls for her to speculate and --

4 JUDGE BARRETT: He is just asking if
5 she knows this -- he is trying to get in his own
6 evidence through some kind of negative pregnant -
7 - the objection is overruled. But, you know, if
8 you have a different objection, we'll --

9 MS. PLOVNICK: Well, I also object
10 that he is going through documents that -- I
11 mean, I understand that you have admitted
12 Exhibits 333 and 334, but there are many other
13 documents that haven't yet been admitted that are
14 in the nature of MPAA's response to IPG's
15 rebuttal, which they haven't even put on yet.
16 And, you know, I -- we have not yet put on that
17 evidence, but some of this is going to be made
18 very clear when that evidence is put on, I would
19 think, so --

20 JUDGE BARRETT: God willing. Mr.
21 MacLean?

22 MR. MacLEAN: Your Honor, I object to

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1 Mr. Boydston's last question on grounds of lack
2 of foundation and facts not in evidence.

3 JUDGE BARRETT: Sustained.

4 BY MR. BOYDSTON:

5 Q Let's look back at -- I beg your
6 pardon. Just give me a second. Let's change
7 gears a little bit. Let's go back to Exhibit --
8 let's go to Exhibit 311. And this is the
9 representation agreement with Screenrights, I
10 believe, correct?

11 A Yes.

12 Q Now, with regard to -- go to page 2,
13 and specifically I'm curious about paragraphs 8
14 and 9. And, well, in general, are you familiar
15 with these representation agreements?

16 A I am.

17 Q And is it fair to say, then, that you
18 are familiar with paragraphs 8 and 9?

19 A Yes.

20 Q Now, that provides a right --
21 contractual right for the MPAA to essentially go
22 to the agent, in this case Screenrights, and ask

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1 that Screenrights provide some sort of
2 verification or documentation of who they have
3 assignments from, correct?

4 A Upon request.

5 Q Right.

6 A On an as-needed basis. And I believe
7 it's in our sole discretion.

8 Q Fair enough. Do you recall whether or
9 not, or do you know whether or not, the MPAA ever
10 exercised that right with regard to Screenrights?

11 A With regard to Screenrights, we do
12 have an affidavit that I believe that -- or a
13 letter, excuse me, from Screenrights to me that I
14 believe will be discussed in later testimony. I
15 don't know that it has been admitted yet, and I
16 haven't talked about it, so in response to
17 allegations raised by IPG about their capacity
18 claim, we did confer with them.

19 However, Screenrights is known to me
20 not only as a validly constituted CMO under the
21 laws of Australia; they also serve with me on the
22 General -- in the General Assembly of AGICOA.

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1 And I should point out that paragraphs 8 and 9 in
2 fact, you may be dismayed to know, were actually
3 included in our representation agreement,
4 specifically for claimants like IPG, where in the
5 instance that we felt there was some dubiousness
6 to the claimant's claim, we had the right to seek
7 substantiation.

8 Q Has the MPAA done that as far as you
9 know with anybody?

10 A With anybody?

11 Q Yes.

12 A Other than IPG?

13 Q Yes.

14 A No.

15 Q Never?

16 A I can't -- I don't know the answer to
17 that. I did not micromanage every action that
18 Marsha took in the many years that she did this
19 job.

20 Q So none that you're aware of. As far
21 as you know -- well, I guess let's -- let me just
22 back up.

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1 A That would not be accurate to say.

2 Q When I first asked I said never --

3 A I have personally never done it. I
4 have personally never done it. And the only
5 instance I'm aware of is Marsha's -- Ms.
6 Kessler's investigation into IPG's claims.

7 Q Thank you. On the following page,
8 paragraph 10, paragraph 10 states, "This
9 agreement exists in perpetuity. However, either
10 claimant or MPAA may terminate this agreement
11 upon expiration of a written 30-day advance
12 notice." Are you familiar with this provision?

13 A Yes.

14 Q And then it continues to say, "Such
15 notice shall terminate MPAA representation only
16 as to royalty years for which the CRB has not yet
17 docketed a Phase 1 distribution proceeding at the
18 time the notice is received by the MPAA." Has
19 the MPAA received notices terminating
20 representation agreements like this as far as you
21 know?

22 A To my knowledge, we have never

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1 received a notice terminating our representation.

2 Q Is it your understanding -- and I'm
3 not asking for a legal opinion, although you are
4 a lawyer, I'm not -- you're not here as a lawyer
5 -- is it your understanding that this provision
6 means that if someone does terminate with the
7 MPAA, the MPAA still has the right to go ahead
8 and prosecute rights on proceedings that have
9 been docketed in the Phase 1 distribution?

10 MS. PLOVNICK: I'm going to object
11 that this does in fact call for a legal
12 conclusion.

13 MR. BOYDSTON: I'm just asking her
14 understanding of the phrase, just like I would
15 any contractual party in litigation.

16 JUDGE BARRETT: Sustained.

17 MR. BOYDSTON: Sustained?

18 JUDGE BARRETT: Do not answer.

19 THE WITNESS: Oh. Thank you.

20 BY MR. BOYDSTON:

21 Q Let me ask you to go back -- let's
22 take a look at Exhibit 338. Now, 338 there are -

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1 - again, the first page is for calendar year
2 2007, and then it goes on, the next year, the
3 next year, the next year. And looking at the
4 first year, 2007, I'm looking at the third page
5 of that document which is Bates Stamp 08173, and
6 there is a bunch of -- it's a chart. It says
7 Owner, then Title, other items. And a number of
8 these things are crossed out. Do you see that?

9 A Yes.

10 Q And I'm assuming, but I'm asking you,
11 what is the significance of receiving something
12 like this with it crossed out?

13 A That the claimant does not claim that
14 particular title.

15 Q And looking at the third page, the one
16 I originally directed everyone to, the third item
17 down lists the owner as Audio-Visual Copyright
18 Society Limited, trading as Screenrights. And
19 the title is Outdoorsman with Buck McNeely, and
20 they are crossed out, correct?

21 A Yes, that's correct.

22 Q And so I take it from your testimony

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1 so far this document was sent by the MPAA to
2 Screenrights, Screenrights reviewed these items,
3 crossed out ones where Screenrights did not have
4 the rights, correct?

5 A Where their claimants, those that they
6 represented, did not have the rights, yes.

7 Q Thank you. Thank you for the
8 clarification. Now, accordingly, if we go back
9 over to Exhibit 309, and we look at Appendix B,
10 and we page to where the 2007 cable list is,
11 which I see it's -- well, at least the midst of
12 it is in page 166 to 167. This is a list of all
13 claims -- excuse me, all claimed programs where
14 the MPAA claimants, agents, et cetera, came back
15 and said, "These are our programs." So, in other
16 words, this won't contain anything that's crossed
17 out, correct?

18 A Yes.

19 JUDGE BARRETT: Mr. Boydston, I'm
20 sorry, are you looking at 309 or 310?

21 MR. BOYDSTON: I apologize, Your
22 Honor. It's 309.

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1 JUDGE BARRETT: Okay.

2 MR. BOYDSTON: They are very similar.

3 One is cable, I think.

4 JUDGE BARRETT: I understand. That's
5 why I asked. And we're looking at page 167 --

6 MR. BOYDSTON: Yes.

7 JUDGE BARRETT: -- of Appendix B?

8 MR. BOYDSTON: Right. And, actually,
9 I'm about to move from there because I'm looking
10 for where the Outdoorsman with Buck McNeely would
11 appear if it were in here, and I believe if it
12 were in here it would appear on 164, because
13 that's where the O-U, et cetera, titles are.

14 BY MR. BOYDSTON:

15 Q Do you see 164, Ms. Saunders?

16 A I do see 164.

17 Q And Outdoorsman with Buck McNeely
18 doesn't appear in there, which is correct, since
19 it was crossed out, correct?

20 A Yes.

21 Q Okay. Now, let me ask you -- let's
22 just stay on this 309 for the moment. And

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1 page 255 of 309 -- or 309B --

2 A I'm sorry. 255?

3 Q Yes. And on 255, in the first column
4 on the left, about three-quarters of the way
5 down, I see Outdoorsman with Buck McNeely. Do
6 you see that as well?

7 A I do see that.

8 Q Okay. So since it's in there,
9 presumably it would be in one of these
10 certifications, correct?

11 A It should be. However, I believe --
12 well, it should be.

13 Q Right. And I won't hide the ball
14 anymore -- I don't think it is -- but let's just
15 take a look. If we go back to Exhibit 338, and
16 you page to the certificate of entitlement for
17 the year 2009, and then you look down the list --

18 MS. PLOVNICK: It's on the last page,
19 MPAA-S-09 --

20 MR. BOYDSTON: What page number did
21 you just --

22 MS. PLOVNICK: On Bates Stamp Number

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1 MPAA-S-0922.

2 BY MR. BOYDSTON:

3 Q If I'm not mistaken, that's one a
4 year, isn't it?

5 MR. MacLEAN: I'm sorry. I'm still
6 looking for it over here. What exhibit are we
7 on?

8 MR. BOYDSTON: 338, right?

9 MS. PLOVNICK: Yes. And it's 338;
10 it's for 2009.

11 JUDGE STRICKLER: And what's the Bates
12 Number again?

13 MS. PLOVNICK: It's Bates Number MPAA-
14 S-0922, and there may be a third 2. I have a
15 hole punch there, so it's hard for me to --

16 JUDGE STRICKLER: There probably is a
17 third 2.

18 THE WITNESS: The Outdoorsman with
19 Buck McNeely. Yes. Yes, it is there.

20 JUDGE BARRETT: So that would be 221,
21 because the next one is --

22 MS. PLOVNICK: Oh. So maybe it is 22

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1 -- I'm sorry. I have a hole punch on my copy.

2 JUDGE BARRETT: Sorry. 223. Judge
3 Strickler correct me.

4 BY MR. BOYDSTON:

5 Q So it appears for calendar year 2009
6 there are two certificate of entitlements, one
7 that begins on 9218, and one that begins on 9221,
8 correct?

9 A Okay. Now you've lost me. I was
10 ready to go with the title, but now you've thrown
11 me -- I'm sorry. You're asking me if there are
12 two certifications for Screenrights?

13 Q Well, yes. And I'm going to refer to
14 the MPAA's Bates Stamp Numbers. If you'll look
15 at 9218 --

16 A Okay.

17 Q -- the certification of entitlement,
18 calendar year 2009 --

19 MR. MacLEAN: Objection.

20 JUDGE BARRETT: Oh, what is the -- I
21 can't sustain it until I hear it.

22 MR. MacLEAN: Your Honor, I object to

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1 the witness being questioned about a document
2 that is not in evidence.

3 MR. BOYDSTON: They have listed it as
4 one of the documents they intend to put in
5 evidence. I'm not asking to admit it now. And
6 at this point, I'm just trying to clear one thing
7 up and then I'm going to be done.

8 JUDGE BARRETT: Do I understand that
9 they have no objection to this being admitted?
10 If so, do you want --

11 MR. BOYDSTON: No. We have no
12 objection to this being admitted.

13 JUDGE BARRETT: Okay. 338 is
14 admitted.

15 (Whereupon, the above-referred to
16 document was received into evidence as
17 MPAA Exhibit No. 338.)

18 BY MR. BOYDSTON:

19 Q Now, the only thing I have left on
20 this is just trying -- it appears there's two of
21 these, and I just wanted to ask how come.

22 A Two of what? Certifications?

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1 Q Yes. There's -- starting at 9218,
2 it's -- there's a certification of entitlement,
3 calendar year 2009, and the signatory is Audio-
4 Visual Copyright Society Limited trading as
5 Screenrights. Then, if you page forward three
6 pages, it's -- at 9221 --

7 A Right.

8 Q -- there is another one. It's a
9 different date. The first one is dated 6/8/2012;
10 the second one is 2/10/2012, also with
11 Screenrights. I wonder why there's two?

12 A I do not know. It could simply be a
13 photocopying error. I have no idea.

14 Q Well, they're different dates, so I
15 think they're probably different documents.

16 A All right.

17 Q One has Buck McNeely, and one doesn't,
18 so --

19 A I do not know.

20 Q Okay. Fair enough. Turning back to
21 311, and going to page 3 of 4, towards the bottom
22 there is a bold item that says Provisions Related

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1 to Conflicting Claims." And everything is
2 redacted except the very first phrase, "If a
3 dispute arises between MPAA-represented parties,"
4 and then it doesn't say anything else. Can you
5 tell us generally what that provided for and why
6 it was redacted?

7 MS. PLOVNICK: Objection. Your Honor,
8 this was redacted by counsel, and he is asking
9 her to testify to the contents. We gave him a
10 redaction log. If he had wanted to bring a
11 motion for more information in terms of trouble
12 with the redactions, he could have done that. He
13 never did it.

14 JUDGE BARRETT: Sustained.

15 BY MR. BOYDSTON:

16 Q Going back to the provisions 8 and 9
17 on the previous page giving the authority to MPAA
18 to examine its agents to obtain information about
19 the specifics of their -- the parties they claim
20 to represent, you've said that that's -- as far
21 as you know, that has never been done except with
22 regard to IPG. What circumstances -- under what

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1 circumstances would the MPAA make such an
2 investigation?

3 MR. MacLEAN: Objection. Move to
4 strike the mischaracterization of a witness'
5 prior testimony.

6 JUDGE BARRETT: Sustained.

7 BY MR. BOYDSTON:

8 Q Under what circumstances would the
9 MPAA exercise those rights?

10 A If we had reason to suspect that a
11 claimant was making a claim that was false. And
12 by that I do not mean a simple error, I mean an
13 intentionally false act of fraud.

14 Q And that has never come up, as far as
15 you know? As far as you know.

16 A Other than with IPG, as far as I know,
17 that is correct. Oh, I take that back. There's
18 one other claimant. I forgot. I apologize. But
19 I can't remember the claimant's name. I know
20 that there is one other claimant that has
21 attempted to be represented by MPAA that we have
22 turned down representation of, because we felt

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1 that the company had dubious -- we couldn't
2 verify that it was a legitimate entity.

3 Q So you didn't enter into an agreement
4 with them.

5 A Oh, no.

6 Q So you never got to the point of
7 investigating.

8 A No. Sorry, you're right. I shouldn't
9 have -- you're right. That was a bad example. I
10 was straining to try to give you some more
11 information.

12 Q I appreciate the straining. Let me
13 ask you to take a look at Exhibit 336, and this
14 is a certification sent to ABC Family Worldwide
15 it appears at the bottom. And on the second page
16 there is -- towards the bottom, the second half
17 of the page, there is a -- one program crossed
18 out called Beast Machines. And then beneath that
19 is Beast Wars. Do you have any familiarity with
20 these programs?

21 A I do not.

22 MS. PLOVNICK: I was going to object

1 that this is not in evidence yet, but if you
2 would like us to move in, we --

3 MR. BOYDSTON: I assume it's coming in
4 eventually, and I just wanted to ask a question.

5 JUDGE BARRETT: Well, let's make sure
6 it is before we get --

7 MR. BOYDSTON: Well, I can ask a
8 question even if it's not admitted.

9 MS. PLOVNICK: Well, we intend to
10 offer it as a part of our rebuttal to IPG. You
11 know --

12 MR. BOYDSTON: I tell you what, I'll
13 withdraw the question. And if they admit it and
14 I feel like I need to ask the question, I'll ask
15 the question. Question withdrawn.

16 JUDGE BARRETT: Thank you.

17 BY MR. BOYDSTON:

18 Q Do you review -- sorry. Looking at
19 the certification we did admit, which I believe
20 is 336, do you, as a matter of course, review
21 these certifications?

22 A I personally do not, no.

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1 Q Okay. And at one time I presume that
2 was Marsha Kessler's duty?

3 A Correct.

4 Q And whose duty is it now?

5 A That duty falls to our new manager for
6 royalty distribution, whose name is Andre
7 Dumicic, D-U-M-I-C-I-C.

8 MR. BOYDSTON: Your Honor, I think I
9 am finished. Can I just have one moment to
10 confer with my client?

11 JUDGE BARRETT: You certainly may.

12 MR. BOYDSTON: Thank you.

13 (Pause)

14 Your Honor, we have an email we'd like
15 to admit as IPG's -- well, first, we'd like to
16 introduce it as IPG's Exhibit 124, next in order.
17 It's an exhibit we intend to ask be admitted as
18 rebuttal.

19 (Whereupon, the above-referred to
20 document was marked as IPG Exhibit No.
21 124 for identification.)

22 MS. PLOVNICK: Your Honor, was this --

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1 I don't know if I've seen a copy of this yet. I
2 don't -- was it in the exhibit binder?

3 MR. BOYDSTON: No, it's not. And
4 we're bringing it in on rebuttal for impeachment.
5 I will certainly give you a copy.

6 JUDGE BARRETT: Can you give it to the
7 Clerk?

8 MR. BOYDSTON: Yes.

9 JUDGE BARRETT: Thank you.

10 MS. PLOVNICK: Your Honor, I'm going
11 to object to this. Well, I guess he hasn't
12 offered it yet. Do you want to --

13 JUDGE BARRETT: You can just hang on.
14 He hasn't offered it yet.

15 MR. BOYDSTON: May I proceed, Your
16 Honor?

17 JUDGE BARRETT: You may.

18 MR. BOYDSTON: Thank you, Your Honor.

19 BY MR. BOYDSTON:

20 Q Ms. Saunders, please take a look at
21 this.

22 A I don't have a copy.

1 Q Oh. No, you don't. Look at it from
2 there.

3 (Laughter)

4 Take a minute to read it, and then let
5 me know when you've read it.

6 (Pause)

7 A Okay. I think I've -- I think I've
8 got the gist of this.

9 Q Okay. You had testified earlier that
10 you authorized counsel or directed your counsel
11 to investigate or to make contact with different
12 entities that you believed had -- there may have
13 been conflicting claims between the MPAA and IPG
14 based upon your review of IPG titles. Do you
15 recall receiving this email, and was that
16 consistent with your direction to counsel to try
17 to find out what was going on with some of these
18 conflicting claims?

19 MS. PLOVNICK: Objection. Your Honor,
20 I object. Well, first, Ms. Saunders is only
21 copied on one portion of this email, not on the
22 portion at the top. So that question is very

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1 confusing and misleading. She can't possibly be
2 familiar with an email that she never was copied
3 on or received.

4 Also, the date of this is in 2011,
5 which pre-dated the beginning of this case. So
6 I'm a little confused as to where he's going with
7 this, because -- or how it impeaches anything.

8 MR. BOYDSTON: I'm only interested in
9 the email that she was copied on. I provided the
10 whole thing for completeness.

11 JUDGE BARRETT: Okay. Well, she has
12 to answer whether she can identify it or not.
13 We'll go from there.

14 THE WITNESS: I do -- honestly, I get
15 more than 100 emails a day. I do not recall if I
16 received -- I'm copied on it. Clearly, I
17 received it. Do I recall it? No.

18 BY MR. BOYDSTON:

19 Q Okay. Do you recall -- and going back
20 to your testimony about reviewing the IPG titles
21 and IPG claimants, and you said in your own mind
22 you saw some and said, "Hey, I think that's one

1 of ours," do you recall Beckmann International in
2 that regard?

3 A No. That would not be a claimant that
4 would leap to my mind.

5 Q Okay. You implied that you don't
6 recall this -- the one email that you were copied
7 on. Is that the case, that you don't recall
8 receiving this one way or the other?

9 A I believe I did more than imply. I
10 actually said I do not recall.

11 Q Okay. Just trying to make sure it's
12 clear. Do you recall whether or not you ever
13 discussed this issue that is addressed with Mr.
14 Olaniran? Now, I'm not asking for what he said
15 of course.

16 A No, no. No, I do not recall ever
17 discussing this with Mr. Olaniran.

18 MR. BOYDSTON: All right. Thank you,
19 Your Honor. Nothing further.

20 JUDGE BARRETT: Before we change
21 courses in the middle of the stream here, Mr.
22 Boydston, as I understand it, you are at this

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1 point in our proceedings responding to MPAA's
2 presentation and also making your own
3 presentation with regard to objections to MPAA
4 claims.

5 MR. BOYDSTON: No. No, we're not. We
6 are dealing with -- because they have not
7 actually -- the way it's going to work is is that
8 once they rest their rebuttal of IPG, then IPG
9 will put on witnesses and respond to their
10 rebuttal. Then, IPG will put on its rebuttal of
11 the MPAA, rest, the MPAA will come back on and
12 put on its defense of the IPG rebuttal.

13 JUDGE BARRETT: Okay. That's not how
14 I read this outline, but you know what? You have
15 26-1/2 hours among you. You can spend it the way
16 you want. So you're done for now with Ms.
17 Saunders at least.

18 MR. BOYDSTON: Yes.

19 JUDGE BARRETT: Okay.

20 MR. BOYDSTON: With the understanding
21 they have said she may come back up in the other
22 part of their case, and I may come back and --

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1 MS. PLOVNICK: We do intend to call
2 Ms. Saunders in our rebuttal presentation to IPG.

3 JUDGE BARRETT: Okay. Thank you.

4 Mr. MacLean, do you have questions for
5 Ms. Saunders?

6 MR. MacLEAN: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MacLEAN:

9 Q Good afternoon, Ms. Saunders. I'm
10 Matthew MacLean. I represent the Settling
11 Devotional Claimants.

12 A Okay.

13 Q I believe we just met for the first
14 time a little earlier today.

15 A We did.

16 Q I want to ask you a couple of
17 questions about MPAA Exhibits 311 through 323.

18 A I just put those away. Hold on.
19 Okay. Yes.

20 Q And these are MPAA's representation
21 agreements with various of its claimants and
22 agents for claimants, is that right?

1 A That's right.

2 Q Did all of these representation
3 agreements come from MPAA's records?

4 A From our business records, yes.

5 Q Did you find all of the representation
6 agreements that you were looking for?

7 A I don't -- we found representation
8 agreements for every title that was certified as
9 having been claimed by one of our claimants in
10 this proceeding. Whether we found all of the
11 representation agreements that we were looking
12 for in total, I do not believe that we did.

13 Q The claimants -- the MPAA claims in
14 this proceeding, you found the representation
15 agreements in MPAA's records.

16 A Yes. For every one, yes.

17 Q You didn't fabricate these -- these --

18 A Oh, no.

19 Q -- representation agreements.

20 A No. No.

21 Q You didn't prepare them -- there
22 wasn't a representation here that, for example,

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1 you couldn't find and you simply made one up to
2 submit as if it were the original.

3 A That is correct. I would in no way,
4 shape, or form ever do or sanction any such
5 activity.

6 Q Is that something you wouldn't even
7 dream of doing?

8 A I would fire anyone who was doing
9 something like that that worked for me.

10 Q And why is that?

11 A Because that would be fraud.

12 MR. MacLEAN: No further questions,
13 Your Honor.

14 JUDGE BARRETT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MS. PLOVNICK:

17 Q Ms. Saunders, just very briefly,
18 counsel for IPG, Mr. Boydston, asked you if you
19 were aware if MPAA had ever done investigation or
20 requested additional documentation for any other
21 claimant other than IPG.

22 A Right.

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1 Q And you said you could not recall
2 which specific entity, but you remembered one
3 instance. Does the name All Global Media ring a
4 bell to you?

5 A Yes. That was in fact the claimant
6 that we did not conclude a representation
7 agreement with.

8 Q And All Global Media is represented by
9 Marian Oshita and Kathleen Ormond?

10 A Correct.

11 Q Or purported to be?

12 A Purported to be, yes.

13 Q And they are -- and All Global Media
14 is not an MPAA-represented program --

15 A Absolutely not.

16 MS. PLOVNICK: All right. No further
17 questions.

18 MR. BOYDSTON: Nothing further, Your
19 Honor.

20 MR. MacLEAN: Nothing further, Your
21 Honor.

22 JUDGE BARRETT: Mr. Olaniran, you may

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1 call your next witness.

2 MR. OLANIRAN: Actually, there are no
3 -- I think --

4 MS. PLOVNICK: But we reserve the
5 right to call Ms. Saunders.

6 JUDGE BARRETT: So, Ms. Saunders, if
7 you would leave that marked exhibit on the desk.

8 THE WITNESS: Oh, this one?

9 JUDGE BARRETT: Yes.

10 THE WITNESS: Okay.

11 JUDGE BARRETT: You may step down.

12 (Witness was excused.)

13 Now, is it Mr. Boydston? You may call
14 your witness.

15 MR. BOYDSTON: Thank you, Your Honor.

16 IPG calls Raul Galaz.

17 WHEREUPON,

18 RAUL GALAZ

19 was called as a witness by counsel for IPG and,
20 having been first duly sworn, assumed the witness
21 stand, was examined and testified as follows:

22 JUDGE BARRETT: Ladies and gentlemen,

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1 I don't know what the temperature in the room
2 feels like to you, but if it feels like it does
3 to me please feel free to take off your jackets
4 or do whatever you need to be comfortable. Or
5 throw on a sweater. I don't -- I never know.

6 MR. BOYDSTON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, where are you presently
10 employed?

11 A Worldwide Subsidy Group, doing
12 business as Independent Producers Group.

13 Q And how long have you been in that
14 position?

15 A I helped found that entity starting in
16 1998. And with the exception of about a year and
17 a few months, I was active in that company.

18 MR. BOYDSTON: Sorry for the run
19 around, Your Honor. I failed to bring up the
20 right binders.

21 BY MR. BOYDSTON:

22 Q Mr. Galaz, look at what has been

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1 marked as Exhibit 101 in one of the binders there
2 with you, and tell me if you are familiar with
3 that. Excuse me. Not 101. 100. I beg your
4 pardon.

5 JUDGE BARRETT: That would be in
6 Volume 2 of 4.

7 MR. BOYDSTON: Thank you, Your Honor.

8 THE WITNESS: 101?

9 BY MR. BOYDSTON:

10 Q I'm sorry, 100. I said 101. That was
11 a mistake; it's 100.

12 A Actually, mine doesn't have --

13 Q Well, then, it -- it would be in one
14 of the binders. It may have been a previous one
15 in yours. We got to the point with our binders
16 where we were mixing sizes a bit, so it may not
17 be exactly consistent binder to binder.

18 A All right. I found it.

19 Q And this is a declaration by you.
20 Correct?

21 A That is correct.

22 Q I believe that the last page, executed

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1 on November 30, 2014?

2 A That is correct.

3 Q And did you prepare this?

4 A Yes, I did.

5 Q And is its contents true and correct,
6 to the best of your knowledge?

7 A Yes, it is.

8 Q Just briefly, and I mean briefly, as
9 a general overview, what is it? What does it
10 contain?

11 A Well, there's a lot of very detailed
12 challenges to the claims that are being pursued
13 and brought by Independent Producers Group. And
14 in light of the number of details associated
15 therewith and the limited time that we had had it
16 in the preliminary hearing in the 2000 to 2003
17 cable proceedings, it made sense for me just to
18 put this together addressing all the different
19 matters that I needed to address.

20 JUDGE BARRETT: I apologize. Mr.
21 Galaz, did you state and spell your name for the
22 Court Reporter?

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1 THE WITNESS: No, I didn't.

2 JUDGE BARRETT: Would you, please?

3 THE WITNESS: Raul, R-A-U-L, Galaz, G-
4 A-L-A-Z.

5 MR. MacLEAN: Thank you.

6 Go ahead, Mr. Boydston.

7 MR. BOYDSTON: Your Honor, I'd like to
8 move to admit Exhibit 100.

9 MS. PLOVNICK: I object, Your Honor.

10 JUDGE BARRETT: Basis?

11 MS. PLOVNICK: All right. My basis
12 is, first, we think that this violates the
13 Judges' July 30th discovery order, because it
14 references some documents that were not produced
15 to us by the August 11, 2014, deadline. That
16 July -- the order said that they needed to
17 produce all documents related to representation
18 of any claimant named on Exhibit IPG 1 by
19 August 11, 2014. And there is correspondence
20 referenced in there that it was not produced,
21 specifically some emails with Devillier Donegan
22 and others.

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1 We also want to object on the basis
2 that it includes speculation and information
3 beyond his personal knowledge, the witness'
4 personal knowledge about activities of Marian
5 Oshita and others. And specific paragraphs that
6 -- at issue are 4, 8, 9, 11, 14, 21, 23, and 24.
7 We think it includes illegal -- impermissible
8 legal opinion and conclusions of law, a few
9 bases.

10 And we also -- and this is, you know,
11 since he is testifying here, but we were going to
12 object that the Judges' scheduling order did not
13 permit written surreply rebuttal. And that's
14 effectively what this is, that, you know, the
15 Judges' scheduling order said, "We have written
16 rebuttal statements," and then we have a hearing.
17 This is in fact a written surreply aimed at
18 MPAA's written rebuttal statement, and we didn't
19 see that on the scheduling order as something the
20 Judges had permitted to have done. So we object
21 on that basis.

22 MR. MacLEAN: Your Honor, the SDC also

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1 have an objection. And as for our objection, I
2 will limit it to paragraph 14, which his entitled
3 Hearsay, after the language "Registered mail
4 letter," everything after that, we object to
5 that.

6 JUDGE BARRETT: Mr. Boydston, why are
7 you offering an affidavit from Mr. Galaz when he
8 is here in the flesh and can testify?

9 MR. BOYDSTON: To save time and make
10 it more efficient, Your Honor.

11 JUDGE BARRETT: I appreciate that, but
12 the objections are sustained. He is here; he can
13 testify.

14 MR. BOYDSTON: Okay. As I said, this
15 was not done to hoodwink anyone. In fact, we
16 gave it to them a week ahead so they could get
17 all ready, and --

18 JUDGE BARRETT: I didn't suggest that,
19 Mr. Boydston.

20 MR. BOYDSTON: Okay.

21 JUDGE BARRETT: All I suggested was
22 the witness is here; let's hear from him.

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1 MR. BOYDSTON: Yes, Your Honor.

2 JUDGE BARRETT: Exhibit 100 is
3 rejected.

4 BY MR. BOYDSTON:

5 Q Mr. Galaz, let me ask you to take a
6 look at what is marked as Exhibit 106.

7 And I have to take a second to explain
8 to everyone there is a mistake in the -- our
9 binders that I discovered last night. Exhibit
10 101, the item which is in Exhibit 101 in all of
11 your books was supposed to be 106, and what is in
12 106 is supposed to be 101.

13 Now, we can all change them, although
14 it is kind of a pain in the neck because they're
15 very thick, or we can simply make note of this in
16 our respective exhibit lists.

17 JUDGE BARRETT: I would prefer to do
18 the latter as it's a two and a half inch
19 document. So --

20 MR. BOYDSTON: That makes sense to me.

21 JUDGE BARRETT: So what is currently
22 marked as 101 should be changed to be 106?

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1 MR. BOYDSTON: Correct.

2 JUDGE BARRETT: Is that correct?

3 MR. BOYDSTON: And what is marked as
4 106 should be changed to be 101.

5 JUDGE STRICKLER: When you ask the
6 witness to look at 106, which 106 are you asking
7 him to look at? The newly marked 106?

8 MR. BOYDSTON: I think that would be
9 best.

10 JUDGE STRICKLER: I would think so,
11 too, yes.

12 BY MR. BOYDSTON:

13 Q So I will ask you to look at what's
14 101, which -- let's put it -- this is also one
15 easy way to tell this, if I may. If we look at
16 what's marked in the book as 101, the first page
17 says Item 10. If you look at the first page of
18 what's in the book as 106, it says Item 4.

19 JUDGE STRICKLER: Maybe we can also do
20 it by Bates -- the first Bates Number. That
21 might be a good way to handle.

22 MR. BOYDSTON: Yes. That makes sense

1 to me.

2 MS. PLOVNICK: Which one is it that we
3 should be looking at?

4 MR. BOYDSTON: That's -- I'll make it
5 clear right now.

6 BY MR. BOYDSTON:

7 Q Please take a look at what is now
8 marked 101, which the face page says IPG
9 Discovery Responses to Item 4, and has a Bates
10 Stamp Number of IPG 3000. All right? Tell me if
11 you recognize this exhibit.

12 A Yes, I do.

13 Q And, obviously, it's a fair number of
14 documents. How would you characterize this
15 exhibit and these documents?

16 MR. MacLEAN: Your Honor, I'm sorry.
17 I don't have an objection. However, I'm not sure
18 I'm on the right exhibit.

19 MR. BOYDSTON: May I approach?

20 JUDGE BARRETT: You may.

21 MR. BOYDSTON: It should say Item 4 on
22 it.

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1 MR. MacLEAN: Okay. Is this one --
2 okay. This is -- I think this is what is now
3 marked 106, isn't it? Didn't we agree to change
4 the table of contents?

5 MR. BOYDSTON: This should have been
6 101.

7 MR. MacLEAN: Okay.

8 MR. BOYDSTON: It's a mistake. It
9 says 106 there. It should say 101. This should
10 have been where the tab for 101 is.

11 MR. MacLEAN: Okay.

12 MR. BOYDSTON: And what's in the tab
13 for 101 should have been here.

14 MR. MacLEAN: So I thought we were
15 changing the table of contents to reflect the --

16 JUDGE BARRETT: We're just changing
17 the tabs.

18 MR. MacLEAN: Oh, we're just reversing
19 the tabs?

20 JUDGE BARRETT: Okay.

21 MR. MacLEAN: I'm sorry.

22 MS. PLOVNICK: So this document is

1 now-- Item 4 is labeled now 101.

2 JUDGE BARRETT: Correct.

3 MS. PLOVNICK: Is that right?

4 JUDGE BARRETT: That is correct.

5 MS. PLOVNICK: Okay. Thank you.

6 MR. MacLEAN: That was my fault, and
7 I will stipulate that it be taken out of my time.

8 JUDGE BARRETT: We'll write it down in
9 the great big book of injustices.

10 MR. BOYDSTON: I'm sorry, Lucy. What
11 did you say, Item --

12 MS. PLOVNICK: What exhibit number and
13 what item go together?

14 MR. BOYDSTON: Yes. Okay.
15 Exhibit 101 goes with Item 10.

16 MS. PLOVNICK: 101 goes with Item 10?

17 JUDGE BARRETT: No.

18 JUDGE STRICKLER: No, that's
19 incorrect.

20 MR. BOYDSTON: No. I'm looking at the
21 list. No. 101 goes with Item 4.

22 JUDGE BARRETT: Okay.

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1 MR. BOYDSTON: 106 goes with Item 10,
2 which is what it says in the list. They were
3 flip-flopped accidentally.

4 JUDGE BARRETT: Okay.

5 MS. PLOVNICK: So the list would be
6 accurate.

7 MR. BOYDSTON: Yes, the list is
8 accurate.

9 MS. PLOVNICK: Okay.

10 MR. BOYDSTON: So in each tab where it
11 says 101, you should change that to 106. Where
12 it says 106, it should be 101.

13 BY MR. BOYDSTON:

14 Q So looking at Exhibit 101, which is
15 Item 4 on its first page, can you tell us what
16 these documents are?

17 A These documents are various
18 representation agreements between Independent
19 Producers Groups and entities that are
20 represented in this proceeding.

21 Q And did you prepare this exhibit?

22 A Yes, I did.

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1 Q And where did you obtain the documents
2 that are in it?

3 A They are documents that are within the
4 files of IPG and taken from the business records
5 that we compile. They were also produced in
6 discovery as indicated by the Bates Stamp Number.

7 Q Thank you.

8 MR. BOYDSTON: Your Honor, I'd like to
9 move to admit Exhibit 101.

10 MS. PLOVNICK: Your Honor, I have an
11 objection. Exhibit 101 contains some documents
12 that were not produced to MPAA in accordance with
13 the July 30th discovery order. The Judges'
14 July 30th order ordered IPG to produce all
15 documents relating to its representation of any
16 claim it made in IPG Exhibit 1, and that's on --
17 at page 14, and to do it by August 11, 2014,
18 which is at page 25 of that order.

19 On November 30th of 2014, IPG gave us,
20 for the first time, IPG Bates Stamp Numbers --
21 IPG 5157 through IPG 5200, which included
22 numerous representation agreements. There's

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1 about 44 pages worth of IPG representation
2 agreements for several entities. And I've got a
3 list. I don't know if the Judges would like
4 that, but these are the handwritten Bates Stamp
5 Numbers at the end of this document.

6 And so we object to this exhibit
7 because it has incorporated, as a part of it,
8 items that were not produced in a timely fashion
9 in discovery.

10 MR. BOYDSTON: Your Honor, that is all
11 true. We made a mistake in production. When we
12 -- as soon as we realized it, we sent it off to
13 counsel electronically as soon as we could.
14 There is thousands of pages of documents, as you
15 know, and we simply made a mistake. And they did
16 get it more than a week in advance of this, and
17 so I don't know that there has been any
18 prejudice.

19 JUDGE BARRETT: So the date you
20 supplemented with these additional pages was
21 what?

22 MR. BOYDSTON: November 30th.

1 MS. PLOVNICK: Sunday night of
2 Thanksgiving weekend, I think, or maybe -- it was
3 November 30, 2014.

4 MR. BOYDSTON: That is correct.

5 MR. MacLEAN: And it wasn't produced
6 to us.

7 JUDGE BARRETT: I'm just going to --
8 let me consult with the other Judges on this.
9 And it's a little early, but let's go ahead and
10 take our afternoon recess while we do this
11 consult.

12 (Whereupon, the above-entitled matter
13 went off the record at 2:20 p.m. and resumed at
14 2:48 p.m.)

15 JUDGE BARRETT: Please be seated.

16 MR. MacLEAN: Your Honor, I just
17 wanted to clarify, because I wasn't sure whether
18 it was clear or not before, I was responding to
19 MPAA's objection on the basis of not -- of no
20 discovery. Some of this was produced to us, but
21 the portion at the end we understand was not.

22 I wanted to add, though, that that's

1 not the conclusion of my objection to this
2 exhibit. I would like to state before you rule
3 that if MPAA's discovery objection is overruled,
4 I would like the opportunity to voir direct on
5 this exhibit.

6 JUDGE BARRETT: Thank you, Mr.
7 MacLean. MPAA has objected to the additional
8 pages, which are admittedly -- were admittedly
9 added to this exhibit a week or two ago -- a week
10 ago, on the basis of timeliness, which is a
11 legitimate basis for objection.

12 IPG has responded basically in the
13 vernacular of the younger generation, "My bad,"
14 which is neither an explanation nor an excuse nor
15 an expression of regret. Nonetheless, MPAA has
16 not stated prejudice or harm based upon the late
17 production of these documents. It is possible
18 there might be, and we are not foreclosing that
19 possibility, nor are we foreclosing that
20 possibility with respect to the Settling
21 Devotional Claimants.

22 We will admit these pages with the

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1 proviso that both opposing parties will have an
2 opportunity to do whatever additional inquiry
3 they think is necessary and appropriate, and that
4 would include recalling Mr. Galaz at any time
5 prior to the end of this proceeding. It would
6 include, if necessary, us reconvening this
7 proceeding at some time after the holidays to
8 conclude.

9 Obviously, our preference would be to
10 conclude this as expeditiously as we can, because
11 we have put ourselves on a deadline for ruling,
12 and you're on a deadline for presenting the final
13 material on distribution.

14 Nonetheless, given the fact that there
15 are so many pages here, and that there is -- I
16 didn't count exactly. I suspect it's between 10
17 and 12 additional claimants, maybe more, or
18 additional representations, we will allow both
19 parties the opportunity that they require to do
20 further investigation and followup.

21 MR. MacLEAN: Your Honor, may I
22 conduct a voir dire on the foundation of this

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1 incident?

2 JUDGE BARRETT: Well, we're going to
3 admit them, so you can -- the foundation for
4 their admission, do you mean, or the foundation -
5 -

6 MR. MacLEAN: Yes, Your Honor.

7 JUDGE BARRETT: No. No.

8 Ms. Plovnick?

9 MS. PLOVNICK: I just wanted to -- I
10 had not previously -- but on page 25 in the
11 discovery where -- the reason we made our
12 objection, there was the language that no party
13 may offer any undisclosed document at any further
14 hearing in this proceeding. And these are in
15 fact exactly the same -- the kind of documents
16 contemplated by that. So that is why we made the
17 objection.

18 JUDGE BARRETT: Understood.

19 MS. PLOVNICK: And so, you know, it is
20 what it is.

21 JUDGE BARRETT: It is what it is.

22 Okay. Mr. Boydston?

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1 MR. BOYDSTON: Thank you, Your Honor.

2 BY MR. BOYDSTON:

3 Q Mr. Galaz --

4 JUDGE BARRETT: Oh, excuse me. To the
5 extent either of the other parties have
6 difficulty making contacts or concluding
7 additional discovery or inquiry, you will let us
8 know, so we know how to proceed on Monday or
9 Tuesday.

10 Go ahead, Mr. Boydston.

11 MR. BOYDSTON: Thank you, Your Honor.

12 BY MR. BOYDSTON:

13 Q Mr. Galaz, please take a look at what
14 has been marked as Exhibit 102 and tell me if you
15 recognize that document.

16 A Yes, I do.

17 Q And what are those documents
18 generally?

19 A 102 is a series -- and I think someone
20 counted at some point 40-some-odd
21 acknowledgements of representation that IPG had
22 solicited and had executed by represented

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1 claimants following the 2000 to 2003 cable
2 proceedings.

3 Q And did you put this document
4 together?

5 A Yes, I did. And I was also involved,
6 as was Denise Vernon, in soliciting the
7 documents.

8 Q And were all of these documents -- did
9 you obtain all of these documents from IPG's
10 business records?

11 A Yes.

12 JUDGE BARRETT: So the record is
13 clear, by "Denise," do you mean Ms. Vernon?

14 THE WITNESS: I thought I said Denise
15 Vernon, but --

16 JUDGE BARRETT: Oh, okay.

17 THE WITNESS: -- maybe I said --
18 sorry.

19 JUDGE BARRETT: Okay.

20 MR. BOYDSTON: Your Honor, I'd like to
21 move to admit Exhibit 102.

22 MS. PLOVNICK: No objection.

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1 MR. MacLEAN: No objection, Your
2 Honor.

3 JUDGE BARRETT: 102 is admitted.

4 (Whereupon, the above-referred to
5 document was received into evidence as
6 IPG Exhibit No. 102.)

7 BY MR. BOYDSTON:

8 Q Please take a look at what has been
9 marked as Exhibit 104 and tell me what that is.

10 A 104 or 103?

11 Q I'm sorry. 103.

12 A We just did 102.

13 Q 103.

14 A All right.

15 Q And please tell us what these
16 documents are, what these pages are.

17 A I want to be certain that I have this
18 correct. These were documents that were
19 submitted, I believe -- well, I made a notation
20 somewhere else, but I think that these were
21 documents that were submitted by various IPG-
22 represented claimants. I know that much. But I

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1 think that they were all submitted in connection
2 with when we were having parties execute their
3 contracts and provide us information regarding
4 their programming.

5 Q So these are documents that were --
6 that came from IPG --

7 A Represented claimants.

8 Q To IPG.

9 A To IPG, correct.

10 Q And where did you obtain these
11 documents from?

12 A From our business records. These
13 were, I will specifically say, they were produced
14 in these proceedings, but they were previously
15 produced in the 2000 to 2003 cable proceedings as
16 well. And I can't remember, maybe it was Item 7
17 or not, but they were all produced in the prior
18 cable proceedings as well.

19 MR. BOYDSTON: Your Honor, I'd like to
20 move to admit Exhibit 103.

21 MR. MacLEAN: Objection.

22 MS. PLOVNICK: Go ahead.

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1 MR. MacLEAN: Your Honor, Exhibit 103,
2 unlike the last two exhibits that we just looked
3 at, contain various kinds of correspondence and
4 various formats. It's just -- it's just
5 basically a data dump, and it's not presented in
6 a way that is useful for the parties or the
7 tribunal.

8 There is no foundation for these
9 documents. There is no basis for relevance of
10 these documents. It is just a collection of
11 various kinds of correspondence, not a proper
12 exhibit, and I object on that basis.

13 MR. BOYDSTON: Your Honor, may I
14 respond to that?

15 JUDGE BARRETT: You may.

16 MR. BOYDSTON: They are various types
17 of documents, and they are communications from
18 IPG's claimants to IPG, and they have been
19 maintained in the normal course of business.

20 The other thing I'd like to point out
21 is that in terms of their use and their utility,
22 the Exhibit 115 that I told you about in the

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1 opening statement, which is a chart which very --
2 in a very convenient fashion represents Bates
3 Stamp Numbers in relation to specific companies
4 and entities at issue here, makes use of these so
5 that it's not just a data dump.

6 And when I get to Exhibit 115, which
7 will be pretty soon here, you can see there is a
8 column that follows under the title Exhibit IPG
9 103, and certain discrete Bates Stamp numbered
10 documents are referenced there to cross-index
11 with this. So it's not just a bunch of
12 gobbledygook. Exhibit 115 ties specifically to
13 the important documents which are this group of
14 documents.

15 They were produced in one unit like
16 this. And as we know from past proceedings, it
17 is always best to produce it -- you know, things
18 in a group rather than cherrypick, because then
19 people say, "Oh, you're cherrypicking."

20 JUDGE BARRETT: Thank you.

21 Ms. Plovnick?

22 MS. PLOVNICK: I'm just trying to

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1 determine what the right exhibit is. This is --
2 is the summary that you -- which one?

3 MR. BOYDSTON: 103 is not a summary.
4 115 is a summary.

5 MS. PLOVNICK: I'm looking at -- so
6 you're on 103 right now.

7 MR. BOYDSTON: I'm on 103.

8 MS. PLOVNICK: Not at --

9 MR. BOYDSTON: Excuse me. Yes, I'm at
10 103. I was just referencing 115, which is not --

11 MS. PLOVNICK: I'm sorry. Okay. I
12 got confused by the reference. So I -- we have
13 an objection to 103, and it's -- it is that there
14 are documents included in here that we found
15 objectionable in the last proceeding, and we
16 still find objectionable, because they reference
17 email attachments and exhibits that weren't
18 produced.

19 And I will direct you specifically to
20 Bates Stamp Number IPG 3834, which makes
21 reference to a termination letter that I don't
22 believe was ever produced in discovery and isn't

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1 attached here. It's the document regarding BRB
2 Entertainment, and that's just one example, and I
3 suspect there may be others, if I was to
4 carefully go through.

5 So I raise that objection.

6 MR. BOYDSTON: Okay. Can I just have
7 a second to look at that?

8 (Pause)

9 Your Honor, the document -- the email
10 that Ms. Plovnick refers to is not one that we
11 are directing anyone's attention to anyhow, but
12 it was part of this production and that's why
13 it's included here. I also don't believe that it
14 is regarding an entity that is at issue herein.

15 So I don't think -- I think that's
16 probably why something wasn't -- something
17 further wasn't produced. I don't believe that
18 there was any issue on this in this proceeding.

19 MR. MacLEAN: Your Honor, this is
20 precisely my objection. It's a data dump of
21 things that have -- that if it's not being
22 referred to in this proceeding, then we are being

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1 asked basically to look for needles in a haystack
2 here, and that's not a proper way to --

3 MS. PLOVNICK: So relevance within the
4 --

5 MR. BOYDSTON: Again, Exhibit 115 cuts
6 through that by directing the reader to the pages
7 that we are citing that are relevant in here. We
8 could have cherrypicked it, but we've gotten in
9 trouble for that before.

10 JUDGE STRICKLER: Are you saying that
11 these documents are the documents that support a
12 summary document, and the summary document is
13 document -- Exhibit 115?

14 MR. BOYDSTON: Yes. This and others.
15 Document 115 ties all these documents together on
16 a Bates Stamp by Bates Stamp basis to make it
17 very simple and very easy to walk through all
18 these things.

19 JUDGE STRICKLER: So are you saying
20 that some, but not all, of the documents or the
21 pages that are within 103 serve as the background
22 for a summary exhibit?

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1 MR. BOYDSTON: Yes.

2 JUDGE STRICKLER: Can you identify
3 which ones are the documents that support the
4 summary exhibits, so counsel has some idea --

5 MR. BOYDSTON: Yes.

6 JUDGE STRICKLER: -- of which
7 documents to be looking at?

8 MR. BOYDSTON: Yes. It's in
9 Exhibit 115. Go to 115 now. That's the chart
10 I've been talking about since the beginning. I
11 can describe it fairly quickly I think.

12 JUDGE STRICKLER: And perhaps you can
13 have the witness --

14 MR. BOYDSTON: Yes.

15 JUDGE STRICKLER: -- identify which
16 documents within 103 support the summary document
17 and then counsel will have the opportunity to
18 object on -- with -- or to accept specific
19 documents within 103 as either representing the
20 underlying documents for the summary document or
21 not.

22 JUDGE BARRETT: Exhibit 103 is

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1 admitted. It might be worthless, but it's
2 admitted. And it's worthless, I will tell you,
3 if we cannot interpret it.

4 (Whereupon, the above-referred to
5 document was received into evidence as
6 IPG Exhibit No. 103.)

7 MR. BOYDSTON: Understood, Your Honor.
8 Thank you.

9 To that point, I'm going to skip that
10 -- thank you for the admission. I'm now going to
11 skip ahead, just for the moment, to Exhibit 115.
12 Maybe I should have done that one first to kind
13 of set a foundation, if you will, for the -- how
14 the rest of these work.

15 And I may not even admit it until we
16 have admitted the underlying documents. But if
17 we look at it and then have the witness testify
18 about 115, I think this hopefully will be clearer
19 to everyone.

20 BY MR. BOYDSTON:

21 Q So, Mr. Galaz, can you take a look at
22 what is marked as Exhibit 115.

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1 A Yes.

2 Q And did you create Exhibit 115?

3 A Yes, I did.

4 Q And that is a chart, correct?

5 A It is a chart and it was prepared --
6 it doesn't address the devotionals area. It only
7 addresses the program suppliers category, and
8 specifically in the response to the MPAA rebuttal
9 challenging claims of IPG.

10 Q Okay. Now, in the far left column,
11 the title is IPG-represented claimants, program
12 suppliers for the category.

13 A Right. These are not all the program
14 supplier claimants. These are merely the ones
15 that are being challenged by the MPAA
16 specifically. So I went --

17 Q Understood. So the first item on the
18 -- in the first column is the name of the
19 particular entity, correct?

20 A Correct.

21 Q So the first one is ACME
22 Communications, also known as --

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1 A Mojo Brands Media, correct.

2 Q Now, the first column, at the very
3 top, very, very top, in small letters, it says
4 IPG P-101.

5 A Correct.

6 Q What is that a reference to?

7 A That's a reference to the exhibit
8 numbering that is being used in this particular
9 proceeding.

10 Q Right. So it's Exhibit 101, and then
11 it has the title of it, which is Item 4,
12 representation agreements, correct?

13 A And that was the title that it was
14 used in the course of discovery.

15 Q Right. And then at the -- for ACME
16 Communications, it's blank indicating that there
17 is nothing in that exhibit regarding that
18 company, correct?

19 A Correct. It means that there was no
20 executed representation agreement that was
21 produced for that.

22 Q And then, if we move to the right,

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1 under IPG P-102, entitled Item 5, confirmations
2 of engagement, there is a four-digit number.
3 That, I presume, is a Bates Stamp Number for a
4 document that is in Exhibit 102. Is that
5 correct?

6 A That's correct.

7 Q And so on and so forth. Let me move
8 along two more columns and it's entitled IPG P-
9 103, correct?

10 A Correct.

11 Q And that would be referencing the
12 exhibit that was just admitted, and underneath it
13 says Item 6, representative programs identified
14 within contracting -- oh, excuse me, that's the
15 wrong one.

16 Item 7, IPG-represented programs
17 previously provided to IPG. It says provided to
18 IPG. Is that correct?

19 A Yes. That is correct.

20 Q Okay.

21 A These were all circumstances -- and I
22 know it's confusing because, for instance, you

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1 look at the very first document in there, and
2 there is no cover letter, there is no nothing,
3 and it just so happens I remember that particular
4 document we received in the mail from an entity
5 abroad, just a spreadsheet of all their programs
6 with no cover letter, no -- no nothing.

7 So whereas some of it may be difficult
8 to interpret, it in each circumstance was
9 documentation having to do with a catalog that
10 was provided to IPG sometime in the course of
11 IPG's relationship with that entity. Some of
12 them are emails. Some of them are faxes. Some
13 of them are just mailed correspondence.

14 Q Okay. Well, going down the column
15 entitled IPG P-103, the first time there is a
16 Bates Stamp reference is for the entity Atlantic
17 Film Partners, Beckmann International. Is that
18 correct?

19 A Correct.

20 Q So if we look at the Bates Stamp
21 documents in IPG 103, 3796 to 3805, presumably
22 that is the document -- a document that is

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1 relevant thereto?

2 A That's correct. But 103 will also
3 have additional documents that don't relate to
4 these proceedings, and there is actually a sort
5 of simple explanation for that.

6 Q And what is that?

7 A Quite frankly, for the last several
8 weeks, I have had physical back issues, and for
9 that reason over the -- literally kept putting it
10 off, putting it off, putting it off to the point
11 where I was ultimately doing this at the last
12 minute over Thanksgiving, pulling this stuff
13 together.

14 And as much as I wanted to cull down
15 these exhibits to just those that were
16 particularly having to do with parties that were
17 being challenged, it was just physically too
18 demanding on me to where if something was 100
19 pages or less, then it just made more sense to
20 include the entirety of the particular exhibit.

21 It also, frankly, was of concern to me
22 that I might accidentally exclude something that

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1 needed to be referenced ultimately. But, for
2 example, Item 4, which is IPG-101 P-101, that was
3 originally probably two and a half, three times
4 the size of what ultimately got produced.

5 So it was a question of me going
6 through and finding just those that related to
7 claimants that were being challenged in these
8 proceedings. There is a certain amount, with
9 some of the smaller of these exhibits, extra
10 documents that don't relate, for instance, the
11 one for BRB Entertainment that you had pointed
12 to. But for the most part all of these exhibits
13 that are referenced here are culled down to just
14 those that are being challenged --

15 Q Okay.

16 A -- are being challenged.

17 Q So is it safe to say that the
18 documents in Exhibit 103 that are relevant here
19 to these proceedings are listed in this column in
20 Exhibit 115 under IPG P-103?

21 A And cited, correct.

22 Q And cited --

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1 A By the --

2 Q -- specifically.

3 A -- number.

4 Q Thank you.

5 MR. BOYDSTON: Since I haven't
6 introduced all the other exhibits, it is probably
7 premature to introduce 115, so I'll hold off on
8 that.

9 BY MR. BOYDSTON:

10 Q Let me have you take a look at what
11 has been marked as Exhibit 104. And can you tell
12 us what these documents are?

13 A IPG 104 is a series of account --
14 accountings that we had received from two
15 different entities that Ms. Saunders indicated
16 she is affiliated with where they have accounted
17 to IPG for particular IPG-represented claimants
18 and independently determined that they are the
19 appropriate claimant for those particular
20 programs.

21 Q And did you put this document
22 together?

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1 A Yes, I did. And this was also
2 produced in the 2000 to 2003 cable proceedings.

3 Q And was it produced in this
4 proceeding?

5 A Yes.

6 Q And where did these documents come
7 from?

8 A Business records kept in the normal
9 course of business of IPG.

10 MR. BOYDSTON: Your Honor, I'd like to
11 move to admit Exhibit 104.

12 MS. PLOVNICK: Objection to relevance.
13 This is related to international royalties as
14 opposed to U.S. royalties.

15 MR. BOYDSTON: May I respond, please?

16 JUDGE BARRETT: Yes.

17 MR. BOYDSTON: Relevance is that we
18 would be making argument that to the extent that
19 these two rights -- entities distributed funds to
20 IPG with regard to these specific claimants,
21 those entities made their own independent
22 determination that IPG was properly representing

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1 the entities involved.

2 And so, once again, we have identified
3 the pages within this exhibit that applied to the
4 specific IPG entities for which there are
5 challenges in that Exhibit 115 chart. So, in
6 other words, there will be ABC Company being
7 challenged by the MPAA.

8
9 One of our pieces of evidence that in
10 fact we do represent them may be a documentation
11 from AGICOA saying, "Here are the" -- you know,
12 representing that "Here are the distributions
13 from AGICOA. You represent this entity, we
14 believe you represent this entity, you can
15 increase this money."

16 MS. PLOVNICK: Your Honor, I'm just
17 looking at the AGICOA report. I don't see -- I
18 see the entity, the name of the entity, but I
19 don't see a link with IPG.

20 THE WITNESS: Well, I'm testifying
21 that --

22 MR. BOYDSTON: That's for us to

1 demonstrate. I believe we can.

2 JUDGE BARRETT: Okay. I'm looking at
3 Exhibit 104, correct?

4 MR. BOYDSTON: Yes, Your Honor.

5 JUDGE BARRETT: Item Number 8.

6 MR. BOYDSTON: Yes, Your Honor. Your
7 Honor, may I question the witness further to try
8 to establish what we're getting at here, if need
9 be?

10 JUDGE BARRETT: Definitely need be
11 because Ms. Plovnick's objection is that this has
12 to do with international programming.

13 MR. BOYDSTON: Well, it does. We're
14 not making a claim for international programming
15 here. What we're saying is, to the extent that
16 international -- that international rights
17 societies have paid money to our client on these
18 exact claims for the -- on claims for these exact
19 same entities, we are trying to put this into
20 evidence, so that we can make the argument that,
21 to the extent that AGICOA thinks that, yes,
22 indeed, IPG represents a particular company, that

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1 is evidence that IPG does in fact represent that
2 particular company.

3 Now, that's an argument to be made,
4 but the basis for the argument is this evidence
5 that in fact these international entities have
6 already come to their own conclusion that IPG's
7 claim is valid.

8 JUDGE BARRETT: I'm having difficulty
9 connecting the dots, Mr. Boydston.

10 Ms. Plovnick, can you?

11 MS. PLOVNICK: Well, I don't -- I
12 mean, these documents say that they're from
13 AGICOA. AGICOA is an international CMO, as Ms.
14 Saunders testified. I don't see any link to IPG
15 at all, so I'm -- I don't understand the
16 relevance.

17 MR. BOYDSTON: If I may, can I direct
18 the witness to specific pages?

19 JUDGE BARRETT: Yes, if you would,
20 please.

21 MR. BOYDSTON: Thank you.

22 BY MR. BOYDSTON:

1 Q Looking at Exhibit 115, under the
2 column IPG P-104, which is this exhibit, the
3 first reference to documentation is for the
4 entity American Film Institute. And there's a
5 reference to two pages, 3887 and 3921. So first
6 turning, if you would, Mr. Galaz, turn to
7 page 3887 in Exhibit 4.

8 And I see on that document, on its
9 upper right-hand corner, it says American Film
10 Institute. Is American Film Institute an IPG
11 claimant?

12 A American Film Institute was an IPG-
13 represented claimant. This particular document,
14 3887, was an accounting that we received from the
15 Copyright Collective of Canada wherein they
16 independently determined that in fact AFI had
17 entitlement to the program AFI's 100 Years 100
18 Laughs.

19 Everything that appears in this
20 document, IPG P-104, are documents that came --
21 accountings that came from either AGICOA or the
22 Copyright Collective of Canada after they had

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1 each independently confirmed that the programs
2 that are being accounted for were to be accounted
3 to the particular party that is identified on
4 these documents.

5 Each of these documents was received
6 by IPG, along with presumably a payment for
7 royalties that had been collected, and then
8 accounted to the IPG-represented claimant in
9 connection with that.

10 The simple point is that -- and I
11 acknowledge that even though this has to do with
12 foreign, these are all entities that are making
13 claim worldwide. They are not simply making
14 claim for Europe. They are not simply making
15 claim for Canada. They are making worldwide
16 claim. And to that extent, there is absolutely
17 no issue with their ownership as determined given
18 by the foreign collectives.

19 MR. BOYDSTON: Your Honor, I submit
20 that that's the purpose for which we are
21 admitting these. It is evidence that you will
22 weigh and maybe you'll think, "Nah, I'm not

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1 convinced" or maybe you'll think you are
2 convinced, but there is no reason not to admit
3 it. These are records received by IPG, kept in
4 the normal course of business, and we have
5 testimony explaining what they're for.

6 MS. PLOVNICK: Your Honor, if I may,
7 the domestic and international rights, there has
8 been no evidence here to show that they would be
9 the same. You know, they may have different
10 ownership or right or -- you know, domestic
11 royalties are one thing, and international
12 royalties are another.

13 And just because AFI got royalties or,
14 you know, internationally doesn't necessarily
15 mean that these shows are -- that they advise the
16 right party to get royalties domestically for
17 these shows. And I don't see any link with IPG
18 at all. So I still maintain the relevance
19 objection.

20 JUDGE BARRETT: Mr. Boydston, I'm
21 looking at IPG 3887, all right, on Exhibit 104.

22 MR. BOYDSTON: Yes.

1 JUDGE BARRETT: I see nothing on here
2 that references either Worldwide Subsidy Group or
3 IPG or anybody involved in this proceeding.

4 MR. BOYDSTON: It represents -- it
5 references American Film Institute, which is an
6 IPG claimant. IPG has this piece of paper
7 because it received it in the mail, and that's
8 the testimony of Mr. Galaz, that all of these
9 documents it received.

10 JUDGE STRICKLER: When you say
11 American Film Institute is a claimant represented
12 by IPG, is there any other document that you are
13 going to be introducing that demonstrates that
14 connection?

15 MR. BOYDSTON: It does -- there are,
16 Your Honor. Specifically, for -- the handiest
17 way for me to answer that is looking at
18 Exhibit 115. And looking at Exhibit 115, under
19 American -- I'm having trouble finding it now --
20 American Film Institute, which is the one, two,
21 three, four -- fifth entity down on the first
22 page of 115, there is a representation agreement

1 referenced in Exhibit 101 at pages 3032 to 3036,
2 which is an executed representation agreement in
3 which American Film Institute retained -- or
4 signed the contract with IPG.

5 Then, in addition to that, in
6 Exhibit 122, which has not yet been identified --
7 or been admitted yet, because I haven't gotten to
8 it, there is a document which is a -- it's a
9 correspondence in which American Film Institute,
10 pursuant to its contract with IPG, is identifying
11 its programming so that IPG can make claim for
12 it.

13 Then, moving along, on American Film
14 Institute, there is this document that just came
15 up as well as a second document also in this
16 Exhibit 104. And then in Exhibit 105, which I
17 haven't gotten to yet, there is a two-page
18 document referenced which is items found by IPG
19 when IPG did research to -- further to try to
20 determine program ties for American Film
21 Institute. And that would be it for American
22 Film Institute.

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1 But, yes, to answer your question.
2 It's those multiple things. This is one indicia,
3 one piece of evidence if you will.

4 And, again, it -- I'm -- all we're
5 doing here is admitting it. And if we -- if it's
6 admitted but we don't do a good enough job of
7 explaining why it's relevant, or you just don't -
8 - you don't think you're that convinced by it,
9 then, fair enough, it goes to weight, but that's
10 no reason why it shouldn't be admitted.

11 It's a document that IPG received,
12 there is testimony confirming that, and that's
13 why it's being offered into evidence.

14 MS. PLOVNICK: I know 115 isn't
15 offered yet, but we are going to object to
16 admission of this on several bases, including
17 that IPG was ordered to produce its records in a
18 more organized fashion by the Judges. It would
19 have been great to have something like this, yet
20 they didn't give it to us until we got the
21 exhibit binder. So --

22 MR. BOYDSTON: We didn't create it

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1 until we made the exhibit binder.

2 JUDGE BARRETT: Okay. All right.

3 Okay.

4 (Pause)

5 Well, let's just take the American
6 Film Institute representation agreement for
7 starters.

8 MR. BOYDSTON: You're on Exhibit 101?

9 JUDGE BARRETT: Yes. Page 3032, Bates
10 IPG 3032.

11 MR. BOYDSTON: Yes, Your Honor.

12 JUDGE BARRETT: Which appears to
13 authorize IPG to receive monies from Copyright
14 Collection Society --

15 MR. BOYDSTON: Yes.

16 JUDGE BARRETT: -- for programs and
17 other rights listed on its -- for the rights
18 listed on Exhibit A, the programs they've listed
19 on Exhibit B, which are essentially illegible,
20 and I don't know what all the abbreviations are
21 across the top of the table on Exhibit B.

22 And then there is a declaration

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1 confirming the agreement that Worldwide Subsidy
2 Group is authorized to register claims, resolve
3 disputes, et cetera, with respect to all matters
4 pertaining to Canadian retransmission copyright
5 royalties.

6 MR. BOYDSTON: Yes, Your Honor.

7 JUDGE BARRETT: Still, I'm having
8 trouble connecting the dots.

9 MR. BOYDSTON: Well, the
10 representation agreement itself is for --
11 number 1, authorization, it says, "To collect any
12 and all monies distributed by Audio-Visual
13 Copyright Collection Societies throughout the
14 world." So it was worldwide. The --

15 JUDGE BARRETT: Well, are you
16 suggesting, then, that the Copyright Office is a
17 Copyright Collection Society?

18 MR. BOYDSTON: That was the term that
19 was used in the agreement, and neither party to
20 the agreement had any confusion on whether that
21 meant exactly that. And there's --

22 THE WITNESS: Ask me, please.

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1 MR. BOYDSTON: I'm sorry. I testified
2 and I shouldn't, so maybe I should -- I mean,
3 maybe Your Honors should go ahead and question it
4 by Mr. Galaz, but I'm happy to answer if you want
5 me to answer.

6 MS. PLOVNICK: Your Honor, I would
7 just add that, you know, this document here on --
8 with the Bates Stamp Number IPG Exhibit 3036,
9 this made it look like that the understanding is
10 that the was the Canadian collective. So --

11 MR. BOYDSTON: Wait a minute. Can I
12 -- no. What happened there was Canada
13 specifically asked for something about a Canada -
14 - that's why that says Canada. The agreement
15 itself says throughout the world, and I can have
16 Mr. Galaz -- I can ask Mr. Galaz --

17 THE WITNESS: It's two different
18 documents.

19 MR. BOYDSTON: -- if need be.

20 THE WITNESS: It's two separate
21 documents. They are not -- they are not being
22 intended to be -- purported to be a single

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1 document. It was simply submitted as evidence
2 that IPG had in fact been engaged by American
3 Film Institute. The agreement ends at Exhibit B.
4 And even though it is a bad copy, you can see
5 across the top of it that it's making reference
6 to American Film Institute's -- AFI's 100 Years
7 programs. They have a series of programs.

8 The simple point here was that not
9 only is it a standard representation agreement
10 with IPG which refers to, if you look at the
11 Exhibit A, the rights that are being collected,
12 including cable and satellite retransmission
13 royalties, as one of the rights being collected.
14 We crossed this bridge in the 2000-2003
15 proceedings, but also identifies specific
16 programs. Not all IPG agreements identified the
17 programs, because they were intended to be
18 updated as we went.

19 JUDGE BARRETT: Mr. Galaz, what does
20 -- in the column headings on Exhibit B --

21 THE WITNESS: Okay.

22 JUDGE BARRETT: -- at IPG 3035, what

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1 does CCT stand for?

2 THE WITNESS: Coloration, color, black
3 and white. I think CCT is a designation that's
4 utilized by certain of the -- frankly, I don't
5 recall completely clearly, but it -- some of the
6 applications you make for the foreign collectives
7 ask you to identify whether or not it's a
8 colorized work or in color or black and white.

9 JUDGE BARRETT: That's enough. Thank
10 you. What does 4SE or 4ISE, what does that say
11 in the one, two, three, four -- fifth column, the
12 header? What is that?

13 THE WITNESS: I think -- my
14 recollection is that SE stands for Series or
15 Series Episode.

16 JUDGE BARRETT: Okay.

17 THE WITNESS: Sometimes they require
18 you to identify the episode title.

19 JUDGE BARRETT: All right. And what
20 does YFR stand for?

21 THE WITNESS: Year First Release.

22 JUDGE BARRETT: Okay. And NAT?

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1 THE WITNESS: Nationality.

2 JUDGE BARRETT: And duration is not
3 filled in.

4 THE WITNESS: Duration, language,
5 director, actors, writers.

6 JUDGE BARRETT: Thank you.

7 THE WITNESS: And this is all
8 information that was provided as -- by American
9 Film Institute as part of our contract with them.

10 JUDGE BARRETT: But there is nothing
11 on that table that indicates that any of these
12 shows were retransmitted by cable or satellite in
13 the U.S.

14 THE WITNESS: No, because our contract
15 is for the collection of that. That's part of
16 our responsibility is to collect that data and
17 make the application for that, specifically
18 because it wouldn't make sense for any particular
19 producer to, you might say, invest in whatever
20 data was necessary for them to figure out -- I
21 mean, a lot of them generally don't even know
22 necessarily where they have been broadcast until

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1 we give it to them. And we've given it to some
2 of them just so they can actually do
3 doublechecking on things.

4 But even beyond that, to discern which
5 ones -- which particular broadcasts were even
6 distantly retransmitted, they would have to make
7 the same investment that we make or anybody else
8 in this room makes.

9 BY MR. BOYDSTON:

10 Q And how -- but that's a very expensive
11 investment.

12 A Hundreds of thousands of dollars
13 annually.

14 Q And so part of the service that IPG
15 provides is it makes that investment, so that the
16 individual entity like American Film Institute
17 doesn't have to spend \$100,000 getting data to
18 collect \$100,000 in royalties.

19 A They don't necessarily know whether or
20 not their programs have been distantly
21 retransmitted, and one year they may be and the
22 next year they may not. We have --

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1 JUDGE BARRETT: So IPG spends \$100,000
2 in collecting data to get its 10 percent
3 commission or --

4 THE WITNESS: Yes.

5 JUDGE BARRETT: -- eight or 12 or
6 whatever.

7 THE WITNESS: Yes.

8 MR. BOYDSTON: More than that, but
9 yes.

10 JUDGE BARRETT: I'm no economist, but
11 that doesn't seem to me like a winning
12 proposition.

13 MR. BOYDSTON: Well, that's why they
14 represent more than just one entity. It wouldn't
15 -- it would be a losing proposition if you only
16 represented one entity, but IPG doesn't. It
17 represents hundreds of entities.

18 JUDGE BARRETT: Colleagues, could we
19 concur for a moment, please?

20 (Whereupon, the above-entitled matter
21 went off the record at 3:28 p.m. and resumed at
22 3:38 p.m.)

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1 JUDGE BARRETT: Please be seated. The
2 Judges can see that IPG is by this exhibit
3 attempting to make a connection between IPG and
4 these other entities. There is some relevance to
5 the documents that are being offered. The Judges
6 will admit Exhibit 104.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 IPG Exhibit 104.)

10 And we'll weigh it along with other
11 evidence that either supports or opposes the
12 information therein. So it is admitted and we
13 make no representation about what weight we'll
14 give it until we have the entire record before
15 us.

16 MR. BOYDSTON: Thank you, Your Honor.
17 May I have a seat?

18 JUDGE BARRETT: You may.

19 BY MR. BOYDSTON:

20 Q Mr. Galaz, take a look at what's been
21 marked as Exhibit 105.

22 A All right.

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1 Q And let us know what that is?

2 A Exhibit 105 is the product of
3 independent research that IPG did at different
4 times in order to corroborate the programs that
5 were owned by particular IPG represented
6 claimants. The bulk of it contains printouts
7 from IMDB which is a pretty trusted database for
8 at least with -- maybe not with regard to
9 distribution rights, but with regard to
10 production rights, who the producer of a
11 particular program was. Also mixed in with IPG
12 105 are copyright registrations that were taken
13 from the U.S. Copyright Office and I think I
14 believe that there is also something there from
15 Infomercial Monitoring Service which is an
16 independent entity that is sort of the entity in
17 the infomercial market that has kept tabs on what
18 infomercials are released. And they have a
19 variety of data.

20 We gave them information on particular
21 IPG represented claimants just for them to then
22 cross reference with their records to see which

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1 infomercials had come out, one of the problems
2 being the way infomercials appear in the data
3 that's produced by TV Data. Sometimes it will be
4 a Tae Bo 1 versus Tae Bo 2 versus Tae Bo 3 versus
5 Tae Bo spelled different ways. And each of those
6 have a lot more significance to them, that
7 industry, than it does to me. So we also engaged
8 Infomercial Monitoring Service to give us some
9 information on that particular programming.

10 Q I believe this references Exhibit 115
11 like the previous exhibits. Is that correct?

12 A That is correct.

13 Q And looking at Exhibit 115, the first
14 claimant listed therein, ACME Communications,
15 there's a reference to Document No. 3959 in this
16 Exhibit 105. Why don't you take a look at that
17 Exhibit 105, page 3959. It appears to be a
18 printout from IMDb. Why don't you tell the
19 Judges what IMDb is in case they're not familiar
20 with it or please testify as to --

21 A I think it's Internet Movie Database
22 and it's generally been, at least from our

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1 experience, the most trustworthy database as far
2 as who are the producers of a particular
3 audiovisual work, who are the distributors of it.
4 Distribution rights, as I said, are a little bit
5 more touchy because those will change, whereas
6 the initial producer will not ever change. And
7 it gives background information, everything from
8 the actors to the directors and what have you.
9 You can click on links to come up with all the
10 programming of a particular entity.

11 So for instance, if we had typed in
12 this one right here on IPG 3959, ACME
13 Communications, if we had come at it from a
14 different angle and clicked on a particular
15 program that was owned by them, we then could
16 have clicked on ACME Communications and it would
17 have brought up all their programming.

18 J U D G E F E D E R :

19 How did they obtain this information? Is
20 this like Wikipedia where users provide it?

21 THE WITNESS: It is. And that's, I
22 would say, the downside of it. But truth be

1 told, we had never had any significant issue with
2 it. We've literally seen very, very few
3 circumstances where we've actually seen something
4 and said you know, that doesn't look quite right.
5 It may be outdated and it's typically with regard
6 to distribution information and not production
7 information.

8 JUDGE FEDER: Do you have page 3959 in
9 front of you?

10 THE WITNESS: Yes.

11 JUDGE FEDER: And look under past
12 television titles. What does the next line say?

13 THE WITNESS: My copy is very, very
14 poor.

15 JUDGE FEDER: So is mine, that's why
16 I asked.

17 THE WITNESS: I'm sorry. On my copy
18 it's just -- I know it was clearer when it got
19 scanned in, but --

20 JUDGE BARRETT: Ms. Plovnick, is your
21 copy legible?

22 MS. PLOVNICK: No, Your Honor, it's

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1 not. And many of these documents are illegible
2 and were illegible when they were originally
3 produced to us. They continue to be illegible.

4 JUDGE BARRETT: Thank you. Mr.
5 MacLean, is your copy legible?

6 MR. MacLEAN: Well, the line Judge
7 Feder just referenced is not. Much of it is not.

8 JUDGE BARRETT: Mr. Boydston, what we
9 have before us is a large stack of illegible
10 documents. You will have an opportunity, should
11 you choose to do so or should you be able to do
12 so, to provide all of us with legible copies of
13 each and every one of these pages, otherwise we
14 will deal with what we have.

15 MR. BOYDSTON: Understood.

16 JUDGE BARRETT: Are you offering then,
17 Exhibit -- are you done with the preliminaries on
18 105?

19 MR. BOYDSTON: Yes, Your Honor.

20 JUDGE BARRETT: Other than legibility.

21 MS. PLOVNICK: I want to state an
22 objection to the record that the document is

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1 illegible on IPG's, at least my copy.

2 MR. BOYDSTON: I will stipulate that
3 if one can't read it, one doesn't get my point.
4 (?) 3:44:55)

5 JUDGE BARRETT: Mr. MacLean?

6 MR. MacLEAN: No additional objection,
7 Your Honor.

8 JUDGE BARRETT: Okay. 105 is admitted
9 as is. And with leave for IPG to provide legible
10 copies of everything for every party and each
11 Judge.

12 (Whereupon, the above-referred to
13 document was received into evidence as
14 IPG Exhibit 105.)

15 MR. BOYDSTON: Thank you, Your Honor.

16 BY MR. BOYDSTON:

17 Q Mr. Galaz, take a look at what's been
18 marked as Exhibit 106. And I just remind
19 everyone this is one of the two that was flip-
20 flopped. The third page should say "Item 10."

21 A All right, I'm looking at it.

22 Q And tell us what this document -- what

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1 is one of the documents in this exhibit?

2 A And I just want to clarify, on IPG
3 105, the description is correspondence between
4 various parties in IPG regarding claimed program
5 titles. To be more exact, this is correspondence
6 between IPG and its represented claimants with
7 regard to the claimed programs that are being
8 requested by the represented claimants for IPG to
9 make claim for.

10 JUDGE BARRETT: I'm sorry, Mr. Galaz,
11 there was no question pending, so I have no idea
12 what you were just talking about.

13 Mr. Boydston?

14 MR. BOYDSTON: Thank you, Your Honor.

15 MR. MacLEAN: Objection, no question
16 pending.

17 JUDGE BARRETT: Sustained. Granted.

18 BY MR. BOYDSTON:

19 Q Before we get into Exhibit 115, again,
20 just for the record, describe what these
21 documents are?

22 A These are documents that include

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1 correspondence that was provided to IPG by IPG
2 represented claimants when IPG solicited them to
3 give for the purposes of these proceedings the
4 list of programs that were being claimed by those
5 claimants for these programs.

6 JUDGE BARRETT: Wait a minute, please.
7 I'm sorry. We're talking about again 115?

8 MR. BOYDSTON: No, we're talking about
9 106.

10 JUDGE BARRETT: Oh, all right. Go
11 ahead.

12 MR. BOYDSTON: And I'm going to have
13 him describe that first before we put that before
14 you.

15 JUDGE BARRETT: Thank you, thank you.

16 BY MR. BOYDSTON:

17 Q Mr. Galaz, you were about to give an
18 example. Could you continue?

19 A So, for instance, if you were to look
20 at 115 and --

21 Q Let's not start at 115 right now.
22 Just explain what these documents are, and if you

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1 could give an example?

2 A This is an example where in the course
3 of these proceedings we contacted our
4 representative claimant and said here's a list of
5 up to, one case, 64,000 titles that generated a
6 retransmission royalty. Please go through this
7 and identify which belong to you. And if there's
8 territorial limitations, if there's time
9 limitations, please identify them. These are the
10 responses that came from the IPG represented
11 claimants to IPG.

12 Q And what did IPG do with this
13 information?

14 A We typed it into a database indicating
15 that, for instance, ACME Communications, or
16 whoever it might be, is making claim for this
17 particular year for this particular program.

18 Q And you could say this particular
19 program because you had ACME Communications
20 sending a document in here back to you saying
21 these are our programs?

22 A That is correct.

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1 MR. MacLEAN: Objection, leading.

2 JUDGE BARRETT: Sustained.

3 BY MR. BOYDSTON:

4 Q Where did these documents come from?

5 A They came from the normal business
6 records kept in our files.

7 Q And did you assemble this document,
8 Exhibit 106?

9 A Yes, I did.

10 MR. BOYDSTON: Your Honor, I'd like to
11 move to admit Exhibit 106.

12 MS. PLOVNICK: I have an objection.
13 My objection is essentially -- it's very similar
14 to the one I made in the 2000-2003 proceedings
15 regarding correspondence in that it's incomplete
16 and it's not authenticated. He's purporting that
17 these things as attachments, they came from
18 claimant. We often have emails that have missing
19 pages, some pages may appear later, some may not.
20 We got some electronic records, but they don't
21 have the same names and the same file sizes as
22 the ones that are referenced in these documents.

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1 So we have authenticity issues.

2 I also I have an objection on
3 relevance because some of these are related to
4 2000-2003 cables specifically, and not the
5 royalty funds at issue in this proceeding.

6 MR. BOYDSTON: Your Honor, we did not
7 want to get burned -- excuse me, we did get the
8 same result from the prior proceeding. We
9 attached everything, everything in here has -- is
10 complete and has its attachments with it.

11 Unlike last time, we did not attach to
12 anything like this a big giant electronic file
13 whether it would be 5,000 pages that we couldn't
14 produce in a proceeding like this, like we did
15 back in 2000-2003. So we didn't do that. So if
16 there's something incomplete, I'd like to know
17 where it is because we made a very strong effort
18 to avoid that and that's why this thing is such a
19 behemoth.

20 MR. MacLEAN: Your Honor, I'd like to
21 reiterate Ms. Plovnick's objection. As to where
22 they are, if you take a look at the very first

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1 page of this exhibit, at the top right hand
2 corner of the first page, I'm talking about the
3 first page after the title page, Item 10. Top
4 right hand corner of the first page, page 1 of 2,
5 turn the page. Nothing is here, but the
6 attachments. Turn that page, the very next page,
7 page 1 of 5. Turn the page, nothing but an
8 attachment. Next one, page 1 of 3, turn the
9 page, page 1 of 1. These are all incomplete
10 emails. And I haven't gone through the entire
11 thing like this, but the first five documents I
12 just looked at are all incomplete emails. We
13 object on the rule of completeness to the Board
14 receiving this exhibit in his state.

15 MR. BOYDSTON: Your Honor, we have an
16 explanation. May I question the witness?

17 JUDGE BARRETT: If you would, please.

18 BY MR. BOYDSTON:

19 Q Mr. Galaz, you heard the statement by
20 counsel, with regard to the first two pages,
21 first several pages of Exhibit 106, is it
22 complete? And if so, explain why.

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1 A All right, In the 2000-2003
2 proceedings, there was an objection that, for
3 instance, it would say page 1 of 2 even though
4 were weren't offering for what was in the second
5 page. We went back and we reproduced it then
6 where we gave both pages. So for instance, if
7 you would get -- and I have to refer to Exhibit
8 115, look at the very first one, ACME
9 Communications, item 10, 4160 to 4160 -- excuse
10 me, 4160 to 4161 and you'll see the first one
11 says page 1 of 2. The second page is a printout
12 of the first page of the attachment which, if
13 printed out, would be whatever, 10,000 pages.

14 You then look to the continuing
15 numbers 4759 through 4764 and it's the complete
16 version so that you actually see what's on page 2
17 and any other attachment. And you see from there
18 that it's irrelevant, the entirety has been now
19 produced.

20 So even though somewhat unartfully,
21 the way to be comprehensively certain that
22 everything got produced, every page, even if it

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1 was an irrelevant page 2, is that in the 2000-
2 2003 proceeding and in this -- I think in the
3 2000-2003 proceeding, we then went back and
4 attached emails, even if it said page 1 of 2, we
5 gave both pages and if the second was irrelevant
6 and produced that. All of that is in this
7 document.

8 MR. BOYDSTON: Your Honor, if I may
9 add in addition to that, the fact of the matter
10 is and the Federal Rules of Evidence say this,
11 that if a document is incomplete, it's only a
12 consequence if it's incompleteness affects its
13 value. So number one, we gave everything, and
14 number two, this entire inquiry is inappropriate
15 anyway unless someone can show some prejudice or
16 some reason why the evidence is compromised by
17 backing a document.

18 And may I point out, too, let's not
19 forget all of the documents that were admitted
20 for the MPAA with scores of portions of
21 agreements are redacted. How relevant is that?

22 JUDGE BARRETT: Mr. Galaz, page

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1 IPG4160.

2 THE WITNESS: Okay.

3 JUDGE BARRETT: It says Adler Media.

4 THE WITNESS: Yes.

5 JUDGE BARRETT: At the top.

6 THE WITNESS: Okay.

7 JUDGE BARRETT: Page 1 of 2.

8 THE WITNESS: Okay.

9 JUDGE BARRETT: The second page is a
10 table of sorts, the title of which is Royalty
11 Generating Titles. And at the bottom it says
12 page 1.

13 THE WITNESS: Okay.

14 JUDGE BARRETT: Okay, then page 4162,
15 Agency for --

16 THE WITNESS: Instructional
17 Technology.

18 JUDGE BARRETT: Thank you,
19 Instructional Technology, page 1 of 5.

20 THE WITNESS: Okay.

21 JUDGE BARRETT: The following page,
22 4163, is a table.

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1 THE WITNESS: All right.

2 JUDGE BARRETT: Entitled Royalty
3 Generating Titles, page 1. It is exactly in the
4 same format as the page 1 royalty Generating
5 Titles table on 4161.

6 THE WITNESS: Can I explain?

7 JUDGE BARRETT: Yes, that's what I was
8 going to ask you to do.

9 THE WITNESS: Certainly, when we were
10 contacting the parties that we represent, we
11 started off by giving them a list from our
12 analysis and from our data of the titles that had
13 been broadcast and generated a royalty. If we
14 had done broader than that, then obviously it
15 would have been everything in the United States
16 and that would be including a lot of irrelevant
17 titles because not everything is distantly
18 retransmitted.

19 So first we have a list which is big
20 enough in this particular proceeding in excess of
21 64,000 titles that we gave to the IPG represented
22 claimants and we said to them these are all the

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1 royalty-generating titles. Go through them and
2 figure out which are yours. They then responded
3 with this where they came back in an Excel
4 spreadsheet and identified just those that are
5 theirs. It gets placed at the top of the Excel
6 spreadsheet. If you were to print out this Excel
7 spreadsheet, it would be something like 10,000
8 pages, any one of them.

9 So all we would do is for purposes of
10 production, although we gave it to them
11 electronically, nonetheless, the response, we
12 would only print out for purposes of the hard
13 copy those pages that the claimant had
14 specifically identified this is my programming.
15 And we asked them to do it by putting their name
16 in the second column.

17 So you'll see, like in that example,
18 on the left, the first column are program titles.
19 And the one for Adler Media, Africa's Campaign
20 Trains, Cosmonaut Coverup, Adler Media, by its
21 appearance in that second column, had put its
22 name there and then responded to us by this email

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1 that's 40160 and attached the Excel spreadsheet
2 identifying which programs are theirs. So
3 they'll all be the exact same format from every
4 single IPG represented claimant unless the
5 claimant, some of whom didn't follow instructions
6 and instead they would just say oh, I only have
7 Africa's Champaign Trails or something like that.

8 JUDGE BARRETT: So with respect to
9 page 4161, the lower half of that chart does not
10 say Adler Media in the second --

11 THE WITNESS: So it's not being
12 claimed.

13 JUDGE BARRETT: So it's not part of
14 the Adler Media claim.

15 THE WITNESS: Precisely.

16 JUDGE BARRETT: And there's no page 2
17 of 2?

18 THE WITNESS: We could give page
19 through 10,000.

20 JUDGE BARRETT: No, I'm talking about
21 the email, 4150 --

22 THE WITNESS: Oh, oh, oh. Yes, there

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1 is. And that's what I was saying. On 4759, if
2 you look forward to 4759, because the way this
3 all came about was an objection that these were
4 incomplete because the subpage 1 of 2 and page 2
5 wasn't there. So if you looked at 47 --
6 actually, that's wrong.

7 JUDGE BARRETT: Actually, I did and
8 that was --

9 THE WITNESS: That's an ACME. So
10 that's a mistake.

11 MR. BOYDSTON: It's in the column for
12 ACME. It's ACME, not Adler.

13 THE WITNESS: Well, then --

14 MR. BOYDSTON: 4770, I think.

15 THE WITNESS: If you look at 4770, but
16 that's something different. Hm. I'm trying to
17 explain that one.

18 MS. PLOVNICK: Your Honor, the issue
19 that we would raise in addition was that he filed
20 -- they produced electronic files wouldn't match
21 the name as you see it on this Adler Media 1 IPG
22 4160. It would have a particular name,

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1 attachments, titles, royalty generation for Adler
2 Media Excel X and there would be a particular
3 file size there.

4 When we attempted to cross reference
5 those, the documents they produced that were
6 electronic documents we were not able to make
7 that connection so that we could say okay, this
8 particular email matches the title, matches the
9 file size, so therefore this is, in fact, the
10 attachment which they are saying was -- so this
11 was the issue for 2000 to 2003 that persists.

12 JUDGE BARRETT: Could you not have
13 done the Excel search to put Adler at the top?

14 MS. PLOVNICK: The document would have
15 Adler at the top. It just wasn't clear to us who
16 made those annotations in the document. Was it
17 IPG? Was it the claimant? The authenticity
18 issue was the one that we raised and objected to.
19 We could not make that authenticity link because
20 the way the documents were produced the file had
21 a different name, a different file size, and
22 could have been made by anyone. So as this is

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1 produced, this worksheet could have been
2 completely made by IPG. We don't know if this
3 claimant made this as they are purporting or if
4 IPG made this. And that was our objection on the
5 authenticity grounds.

6 MR. BOYDSTON: Your Honor, may the
7 witness respond?

8 JUDGE BARRETT: Yes.

9 THE WITNESS: When we sent this out,
10 the list of -- for instance, 64,000 titles, when
11 a claimant responds as we've directed them to
12 return the Excel spreadsheet with notations of
13 their particular programs identified in the
14 second column, we sent out literally an identical
15 file to let's say, for example, 100 different IPG
16 represented claimants. When they respond, the
17 title of that document is the same for every 100
18 of them.

19 So the only way that you could discern
20 as you put together would be literally to say
21 okay, well, I got this one for Adler Media, but
22 it still says 64,000 title list or something like

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1 that. So we would change the title to Adler
2 Media. That's exactly how we produced it.

3 As far as what Ms. Plovnick is saying,
4 as far as the difference in the size of it, I
5 can't explain it other than it would minutiae
6 perhaps to change from it going from Excel to
7 Excel X or something like that, but it was never
8 a circumstance where there was any manipulation
9 by us other, I will say, than when we would get a
10 list of 64,000, some of them would literally put
11 it -- their name in the second column right next
12 to a title, but then not organize it so it could
13 all be put up at the very top.

14 We would do the resort just so all
15 their titles was just up at the top. That's the
16 only manipulation. We never added a single one
17 that wasn't put there by the claimant.

18 MS. PLOVNICK: I was just going to add
19 this particular file, for example, on Adler
20 Media, the title of the file referenced in the
21 email actually has Dinner 84 Adler Media in it,
22 so if it had simply been saved as it was, it

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1 would have been clear that it belonged to Adler
2 Media. It just wasn't. And I think, I suspect,
3 that many of these will have the title of the
4 claimant in the document when they come back.
5 They may not all have looked at every page of
6 this thousand page --

7 MR. BOYDSTON: Your Honor, may the
8 witness respond to that?

9 JUDGE BARRETT: Where does it say
10 "generating for Adler Media"?

11 MS. PLOVNICK: I'm looking on IPG
12 Exhibit --

13 JUDGE BARRETT: Oh, I see.

14 MS. PLOVNICK: The Bates stamp number
15 is 4160 under attachment and it has the name of
16 the file and this file's size. And so because
17 they didn't produce it in the same form with an
18 attachment included in more than an electronic
19 file, we tried to go through and see okay, well,
20 can we find that file that's referenced right
21 here in paper so we can connect the dots there
22 and make sure that this is, in fact, what the

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1 claimant was trying to send back, but we could
2 not make that connection.

3 JUDGE BARRETT: Okay, but that says we
4 have 16 increased for Adler Media. Okay, the
5 following one doesn't have any -- I'm looking at
6 4162, has no claimant name.

7 MS. PLOVNICK: You're talking about
8 the attachment on the next page.

9 JUDGE BARRETT: Right.

10 MS. PLOVNICK: No, I was -- the
11 electronic file that they produced, we couldn't
12 confirm that the paper that's attached on the
13 next page, IPG 4161, was the same as the
14 electronic.

15 JUDGE BARRETT: I understand, but with
16 that one at least you can tell that it's 16
17 entries and that there are 16 entries.

18 MS. PLOVNICK: For Adler Media.

19 JUDGE BARRETT: The next email which
20 is 4162, the respondent did not change the name
21 of the electronic file, so there would be no way
22 that IPG could have provided you anything other

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1 than to give you the whole darn thing and have
2 you do the sort for Agency for Instructional
3 Technology.

4 MS. PLOVNICK: Right, but for that
5 particular claimant, that is true, but if you
6 flip to 4165 for Beyond International, the file
7 name is different and the file size is different.
8 It's 2,407 kilobytes.

9 JUDGE BARRETT: Okay, all right, thank
10 you. Mr. Boydston?

11 MR. BOYDSTON: Your Honor, we'd like
12 to move to admit Exhibit 106. I think that's
13 where we started.

14 Let me also, if I may, just point out,
15 we're admitting this for a very limited purpose.
16 They're saying that people like Adler Media
17 terminated with us, don't want anything to do
18 with us, think we're scum. This is being offered
19 just simply to show they're communicating with
20 us.

21 JUDGE BARRETT: Okay, all right. 106
22 is admitted.

1 (Whereupon, the above-referred to
2 document was received into evidence as
3 IPG Exhibit 106.)

4 BY MR. BOYDSTON:

5 Q Mr. Galaz, please take a look at
6 Exhibit 107.

7 JUDGE BARRETT: On my exhibit list,
8 107 is marked as restricted. Are you going to be
9 --

10 MR. BOYDSTON: Thank you, Your Honor.

11 JUDGE BARRETT: Are you going to be
12 asking for testimony on the contents of that
13 exhibit?

14 MR. BOYDSTON: Yes, Your Honor. I
15 think we are.

16 JUDGE BARRETT: If there is anyone in
17 the courtroom who is not a signor of a
18 confidentiality agreement regarding restricted
19 materials in this proceeding, please wait. And
20 there is a closed session sign, we'll just peel
21 and stick. Well, it's magnetic, but --

22 JUDGE BARRETT: Mr. Boydston?

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1 MR. BOYDSTON: Thanks, Your Honor. I
2 got confused with the back and forth.

3 BY MR. BOYDSTON:

4 Q Mr. Galaz, do you recognize Exhibit
5 107?

6 A Yes, I do.

7 Q And did you prepare Exhibit 107?

8 A Yes, I did.

9 Q And describe for us generally what
10 Exhibit 107 is?

11 A Exhibit 107 are various Notices of
12 Termination that were received by IPG that I had
13 a termination notice filed.

14 Q And released, produced in discovery?

15 A Yes.

16 Q How were these documents maintained?
17 I think we've already covered it. I think you
18 already answered before I asked --

19 A With regard to all of these they're
20 all maintained in the normal course of business
21 within the files of IPG.

22 MR. BOYDSTON: Your Honor, I'd move to

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1 admit Exhibit 107.

2 MS. PLOVNICK: No objection.

3 MR. MacLEAN: No objection.

4 JUDGE BARRETT: 107 is admitted.

5 (Whereupon, the above-referred to
6 document was received into evidence as
7 IPG Exhibit 107.)

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, please take a look at
10 Exhibit 108.

11 A All right.

12 Q And tell us what that is.

13 A Well, following reports, the Judge's
14 order of July 30, 2014, there was an inquiry as
15 to the correspondence involved with confirmations
16 of engagement that IPG had secured from certain
17 parties and we were required to produce that. So
18 I think the allegation that was being made is
19 that we had threatened people, or something along
20 those lines. So just belt and suspenders, gave
21 copies of the confirmations of engagement and all
22 the associated correspondence.

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1 Q Thank you.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move to admit Exhibit 108.

4 MS. PLOVNICK: No objection.

5 MR. MacLEAN: No objection.

6 JUDGE BARRETT: 108 is admitted.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 IPG Exhibit 108.)

10 MR. BOYDSTON: Thank you, Your Honor.

11 JUDGE BARRETT: Does that conclude the
12 restrictive exhibits at this time?

13 MR. BOYDSTON: It does.

14 JUDGE BARRETT: We can invite our
15 friends back in.

16 MR. BOYDSTON: Just for everyone's
17 convenience, the next one will be 115.

18 JUDGE BARRETT: Thank you.

19 MR. BOYDSTON: May I proceed?

20 JUDGE BARRETT: Yes.

21 MR. BOYDSTON: Thank you.

22 BY MR. BOYDSTON:

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1 Q Please take a look at Exhibit 115.
2 We've talked about this some so far today, but I
3 just want to confirm that Exhibit 115 also
4 incorporates IPG Exhibit 105, 106, 107, and 108,
5 correct?

6 A Yes, it does.

7 Q And underneath those columns at Bates
8 stamp numbers for particular documents in those
9 exhibits that are relevant to that particular
10 entity, is that correct?

11 A That's correct.

12 Q And I think I asked this before, but
13 did you generate this document based upon those
14 other exhibits?

15 A Yes, I did. I went through and found
16 the Bates stamp numbers that were associated with
17 the particular claimants who one or more claims
18 were being challenged by MPAA.

19 MR. BOYDSTON: Your Honor, I'd like to
20 move to admit Exhibit 115.

21 MS. PLOVNICK: For the record, Your
22 Honor, I have an objection. This spreadsheet

1 includes the documents that were produced to us
2 on November 30, 2014 as IPG handwritten Bates
3 stamp numbers 5157 through 5200. So we object
4 that that production violates the July 30th order
5 for the record.

6 We also object that this worksheet,
7 you know, it would be very convenient if they
8 produced it to us earlier, but we did not get it
9 until December 2nd and we feel that the Judges
10 required them to produce things in a complete
11 fashion, organized fashion and as you can see,
12 this is a dump of documents. This is IPG
13 discovery. We had to go through all of this. If
14 we had a worksheet like that, that really would
15 have made our task easier. So we object that it
16 wasn't produced in a timely fashion.

17 MR. BOYDSTON: Your Honor, this is
18 work --

19 MR. MacLEAN: Your Honor, we maintain
20 the objections that we made to the underlying
21 documents, but we don't object to the admission
22 of this exhibit as a summary.

1 JUDGE BARRETT: 115 is admitted as a
2 compilation or a summary, rather, of the
3 underlying documents.

4 (Whereupon, the above-referred to
5 document was received into evidence as
6 IPG Exhibit 115.)

7 MR. BOYDSTON: Thank you, Your Honor.

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, let me ask you about -- are
10 you familiar with the entity Tracee Productions?

11 A Yes, I am.

12 Q And is it not true that Tracee
13 Productions was an entity that you used in part
14 in criminal activity?

15 A That's correct.

16 Q Was Tracee Productions also engaged in
17 legitimate activity?

18 A Yes, it was.

19 Q And what was that?

20 A It had as an entity secured rights for
21 cable and satellite retransmission royalties from
22 third parties.

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1 Q And in some of your criminal
2 paperwork, there's reference to a name, Francisco
3 Diaz, and your charging information I believe it
4 is stated that that is an alias. Is there a real
5 person named Francisco Diaz?

6 A There is, who I had known for several
7 years, who I could tell you the law firms that he
8 worked at. He was someone who was intimately
9 familiar with my crime and was not charged.

10 Q Based on your understanding of the
11 investigation that was made and to you, and those
12 matters, do you know whether or not Tracee
13 Productions or Mr. Diaz was ever charged by a
14 governmental or law enforcement agency?

15 A I know Mr. Diaz wasn't because that
16 was actually part of my arrangement, part of the
17 arrangement that I made was that he wouldn't be
18 because I was taking responsibility for the act.

19 JUDGE STRICKLER: Excuse me, counsel.
20 You said you would be able to tell us the law
21 firm that Mr. Diaz had worked in?

22 THE WITNESS: Yes, he worked at two

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1 different law firms that I personally know. He
2 was a legal secretary at some point. Actually,
3 two law firms I worked at but at different times.

4 JUDGE STRICKLER: What are the names
5 of those law firms?

6 THE WITNESS: Loeb and Loeb LLP in Los
7 Angeles and Kaye Scholer, I don't know the
8 remaining names, Kaye Scholer in Los Angeles.
9 And I can describe him and I know for a fact that
10 he relocated to the Phoenix area. This is an
11 individual.

12 BY MR. BOYDSTON:

13 Q Now Tracee Productions, I believe, was
14 the claimants for Tracee Productions were
15 included -- let me ask a nonleading question.
16 Did IPG include claimants for Tracee Productions
17 at any time in transmitting to the Copyright
18 Office?

19 A I believe in the 19 -- I know in the
20 1999 filings. I'm not sure if it was 1998 as
21 well.

22 Q Did IPG ever submit any claims on

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1 behalf of Tracee Productions after 1999?

2 A No.

3 Q In the intent to participate that was
4 prepared by IPG in this case, was Tracee
5 Productions listed?

6 A No.

7 Q Are you familiar with the entity
8 British Broadcasting Company?

9 A Corporation. Yes.

10 Q And specifically British Broadcasting
11 Company Worldwide America?

12 A British Broadcasting Corporation and
13 BBC Worldwide America, that's correct.

14 Q And was that a claimant with IPG?

15 A Yes. We had our standard long-form
16 agreement with BBC. BBC Worldwide America that
17 did business as BBC Worldwide as reflected on
18 their letterhead. And in any event, they had
19 always represented to us that they had exclusive
20 North American rights to all of the programming
21 of BBC Worldwide based in the U.K. and we
22 corresponded regularly with the U.K., the

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1 personnel in the U.K. office.

2 Q And did IPG enter into a contract with
3 BBC America?

4 A Yes, we did. BBC Worldwide America.

5 Q Excuse me, Worldwide America. Noting
6 here on Exhibit 115, there's a reference to
7 documents, Bates stamp number 3047 to 3049 in
8 Exhibit 101. Based on your familiarity with
9 these documents, does that appear to be the
10 agreement that was entered with British
11 Broadcasting Company?

12 A That's correct.

13 Q I keep messing up the name. Your
14 Honor, I apologize. I'm just going to call it
15 BBC. Everyone else can call it what they want.

16 JUDGE BARRETT: Well, that would be
17 problematic, Mr. Boydston, inasmuch as there are
18 many iterations of BBC. And Worldwide America,
19 as I understand it, is a subsidiary or some
20 affiliate of the grandfather or great
21 grandfather.

22 MR. BOYDSTON: Why don't I ask the

1 witness a few questions and maybe we can get that
2 straightened that.

3 JUDGE BARRETT: Thank you.

4 BY MR. BOYDSTON:

5 Q Mr. Galaz, who did IPG contract with?

6 A Technically, BBC Worldwide America.

7 Q And what was your understanding as to
8 what the entity BBC Worldwide was compared to or
9 in relationship to BBC Worldwide America?

10 A BBC Worldwide is the, you might say,
11 the mother entity based in the United Kingdom.
12 BBC Worldwide America, as I had understood, was
13 the North American subsidiary. Nonetheless, BBC
14 Worldwide America did business and held itself
15 out as BBC Worldwide and that's reflected even on
16 their letterhead.

17 There is, as far as I can tell,
18 complete lack of any borders between the two
19 entities because we actually would get referred
20 to personnel in the BBC Worldwide -- excuse me,
21 the BBC Limited offices in the U.K.

22 Q Thank you. Let me ask you to take a

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1 look -- well, actually before I do that, did IPG
2 send out correspondence to BBC Worldwide America
3 in connection with these proceedings?

4 A Yes, we did.

5 Q And what was the purpose of that?

6 A Well, we did it also in the 2000-2003
7 proceedings and in both proceedings they
8 cooperated in response to the final decision that
9 was issued in the 2000-2003 cable proceedings.
10 There was an issue between BBC in the U.K. and
11 BBC Worldwide America in the United States. We
12 didn't feel that it had been adequately addressed
13 and there was some confusion, so for that very
14 reason we contacted them, amongst other --
15 several other parties that there were potential
16 issues of confusion and solicited an
17 acknowledgement of representation from them
18 indicating for what time frame we were engaged.

19 Consistent with our agreement with
20 them and their termination that was effective
21 through June 30, 2008, they executed an
22 acknowledgement of representation indicating that

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1 IPG represents BBC Worldwide America in the cable
2 and satellite retransmission proceedings for all
3 broadcasts through and including June 30, 2008.

4 Q And I believe that Exhibit 115
5 references a confirmation of engagement in the
6 second column from BBC Worldwide America, Inc.,
7 Exhibit 115. Is that correct?

8 A Correct, so it would be found in
9 Exhibit 102 at page 3551.

10 Q Let's turn to that. Is this the
11 document you were just referring to?

12 A Yes.

13 Q Pardon me?

14 A Yes, this is the document I was
15 referring to. It was signed by the General
16 Counsel, Vernon Chu. And as you indicate, as I
17 indicated in 1999 through June 30, 2008.

18 Q It appears that Mr. Chu dated it
19 3/14/14?

20 A That's correct.

21 Q And IPG received this from Mr. Chu
22 and from the BBC Worldwide America?

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1 A Approximate to that date. That's
2 about the time that we were sending out our
3 solicitations for -- to certain parties for the
4 acknowledgments.

5 Q Now you referred to a termination by
6 BBC Worldwide America. Explain how that came
7 about.

8 A It's within the -- if you look at
9 Exhibit 115, then you'll find under terminations
10 of agreement for BBC Worldwide, it appears that
11 page 5129, I really had little to do with that
12 other than knowing that BBC at some point had
13 sent a termination letter to us and indicated
14 that prospectively, starting some date, we
15 couldn't make claim for what we could make claim
16 for broadcasts occurring after a certain date.

17 Q And did IPG try to confirm with that?

18 A Yes.

19 Q Let me ask you to take a look at what
20 has been marked as Exhibit 116 and it's a letter
21 -- take a look at it.

22 A All right.

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1 Q And tell me if you are familiar with
2 that letter?

3 A Yes, this is a letter that we recently
4 received from counsel for BBC in which they are
5 indicating that they are terminating the rights
6 with us -- I think it's somewhat confusing, as I
7 understand. They signed conflicting agreements
8 with the Motion Picture Association of America.
9 They're saying that our agreements for cable
10 apply through June 30, 2008, but our agreements
11 for satellite only apply through 2005 or
12 something like there.

13 They're effectively saying they're
14 partially revoking parts of the authority that
15 was granted under the agreement, even though the
16 agreement has a post-term perpetual collection
17 clause.

18 Q Do you have any reason to understand
19 why they issued a letter like this through
20 counsel?

21 A A week earlier than this we had
22 received an email from -- or a letter from Mr.

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1 Chu who had indicated that he raised some very,
2 very technical arguments and demanded that we
3 produce certain documents or petitions to
4 participate the July claims that we had filed on
5 behalf of BBC. It was clear that they were
6 responding to communication from Motion Picture
7 Association of America who was asserting that
8 they were going to challenge all of BBC's claims
9 on the grounds that the petitions to participate,
10 I suppose just for the satellite proceedings, had
11 not said the full name BBC Worldwide America, but
12 instead said BBC Worldwide.

13 Q Let me ask you about -- Your Honor, I
14 would like to move to admit Exhibit 116.

15 MS. PLOVNICK: No objection.

16 MR. MacLEAN: No objection.

17 JUDGE BARRETT: 116 is admitted.

18 (Whereupon, the above-referred to
19 document was received into evidence as
20 IPG Exhibit 116.)

21 MR. BOYDSTON: Thank you, Your Honor.

22 BY MR. BOYDSTON:

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1 Q Are you familiar with an entity known
2 as Beyond Distribution?

3 A Yes, I am.

4 Q And did Beyond Distribution have an
5 agreement with IPG?

6 A Yes, it did.

7 Q Have you -- there's been a declaration
8 by a representative of Beyond Distribution named
9 Mikael Borglund produced in this matter. Have
10 you reviewed that?

11 A Yes, I have.

12 Q And what was your understanding of it
13 from reviewing it?

14 A Well, first of all, we've never had
15 any communication with Mr. Borglund before. Our
16 communication was with other individuals at
17 Beyond Distribution. They cooperated with us in
18 connection for 2000-2003 proceedings. And mind
19 you, I think we only represented them for one
20 year in this proceeding, 2000, if I recall.

21 With regard to the more recent
22 proceedings, they came back and said 64,000

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1 titles, that's going to take forever to go
2 through and we never ultimately got a response
3 from them. We've never received any response
4 from them indicating that we were not engaged.
5 There's been no termination letter that I'm aware
6 of or denial of our representation of them in
7 these particular proceedings. And as I
8 understand from Mr. Borglund, the defense to his
9 first asserted response that they are not
10 revoking, unilaterally revoking the agreement
11 with WSG, is that the individual that signed the
12 contract didn't have the authority to do so.

13 I went back and found, opened up the
14 file and found and found other correspondence
15 from this individual whose prior correspondence
16 simply referred to him as Legal and Business
17 Affairs Executive. That was the individual that
18 signed the contract with us. He forwarded the
19 correspondence to us under that heading and by
20 all understanding of us, he had authority to act
21 on behalf of Beyond.

22 Q Please take a look at what's been

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1 marked as Exhibit 117. Do you recognize that?

2 A Yes. This is actually the
3 correspondence I found.

4 Q And it appears to be from a man named
5 Jerry Dohnal?

6 A Yes.

7 Q That's the individual who you were
8 referring to?

9 A Yes.

10 Q And is that the individual who
11 executed the agreement?

12 A Yes.

13 MR. BOYDSTON: Your Honor, I'd like to
14 move Exhibit 117 into evidence.

15 MS. PLOVNICK: I have an objection and
16 this is renewing my objection to this was not
17 produced pursuant to the July 30th order and we
18 believe it was dated in 1999 and should have been
19 produced pursuant to that discovery order and the
20 first time we got it was December 2, 2014.

21 MR. BOYDSTON: Your Honor, we didn't
22 even know it was relevant until we saw MPAA's

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1 rebuttal statement because there's no issue ever
2 brought up not Beyond Entertainment until then
3 and then we looked at when we found this.
4 There's no reason for us to think that it was
5 responsive to anything because we didn't know
6 there was any issue with Beyond Entertainment.

7 MS. PLOVNICK: Your Honor, the July
8 30th order said to produce all documents related
9 to IPG's authority to represent everyone on
10 Exhibit IPG 1. Beyond International is on
11 Exhibit IPG 1 and this document is a document
12 related to their authority.

13 MR. BOYDSTON: Your Honor, you'll
14 recall that the Judges also ruled that IPG did
15 not have to produce every single piece of
16 correspondence it ever had with any client, only
17 those which were at issue. This is exactly what
18 we did.

19 JUDGE BARRETT: Okay, Beyond
20 International Limited is what's on Exhibit 115.
21 This correspondence that you're seeing to admit
22 at this point, Exhibit 117, is Beyond

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1 Distribution.

2 MR. BOYDSTON: Your Honor --

3 JUDGE BARRETT: With a different name.

4 I don't --

5 MR. BOYDSTON: May I question the
6 witness on that?

7 JUDGE BARRETT: I think you probably
8 should.

9 BY MR. BOYDSTON:

10 Q Mr. Galaz, what's your understanding
11 of the name of Beyond Distribution?

12 A Well, Beyond Distribution is -- if you
13 would look at the declaration that's recently
14 been submitted as part of the MPAA case, it
15 indicates that they are related entities. I
16 actually think, but I don't have it at my
17 fingertips, that our agreement is with Beyond
18 Distribution.

19 The simple point that we were making
20 by providing IPG 117 is to point out that the
21 title that the individual who signed the contract
22 with us indicated was his position. This is the

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1 individual that signed the contract with us that
2 Beyond is now indicating didn't have the
3 authority to enter into the contract, even though
4 he seems to have apparent authority because he
5 represents himself as the Legal and Business
6 Affairs Executive.

7 Q I believe the agreement is 3062 in
8 Exhibit 101, if we turn to that. It seems to say
9 the following shall set forth agreement between
10 Worldwide Subsidy Group WSG and Beyond
11 Distribution PTY Limited. And there's a
12 signature thereon.

13 JUDGE STRICKLER: What's the Bates
14 number on that, counsel?

15 MR. BOYDSTON: 3062.

16 JUDGE STRICKLER: 101?

17 MR. BOYDSTON: Correct, Your Honor.

18 JUDGE BARRETT: Could you just give us
19 a moment, please?

20 MR. BOYDSTON: Yes, Your Honor.

21 Your Honor, if I may, bottom righthand corner of
22 the fax cover sheet has the same name, Beyond

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1 Distribution PTY Limited.

2 JUDGE BARRETT: I realize that.
3 That's why I'm questioning whether they're the
4 same entity. Beyond International is the claim
5 that MPAA -- is the claimant that MPAA says -- or
6 that they're challenging. Correct? And Beyond
7 International is what you have listed on your
8 Exhibit 115 and none of the documents that you've
9 showed us so far has said Beyond International.
10 It has said -- they've all said Beyond
11 Distribution.

12 MR. BOYDSTON: May I ask the witness
13 if he has any clarification? Maybe he does,
14 maybe he doesn't.

15 JUDGE BARRETT: I thought that's what
16 you asked the last time. I didn't hear any
17 clarification, but you can ask again.

18 BY MR. BOYDSTON:

19 Q Mr. Galaz, do you have any explanation
20 as to the difference in these names?

21 A Well, that's the challenge that's
22 being made. I'm not sure, without going back and

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1 checking for the documents, how we listed it in
2 our claims. However, as pointed out, even in the
3 declaration of the executive, the managing
4 director of Beyond Distribution, that's one of
5 the MPAA's exhibits, the three are part of a
6 common entity.

7 MR. BOYDSTON: Your Honor, I'm just
8 checking the MPAA exhibit on that to see what it
9 says.

10 MS. PLOVNICK: It's MPAA Exhibit 326.

11 JUDGE BARRETT: So Mr. Plovnick --

12 MR. BOYDSTON: 326.

13 JUDGE BARRETT: -- was there any way
14 for IPG to know that MPAA was challenging a
15 Beyond Distribution/Beyond International claim
16 prior to -- when did you first notify them?

17 MS. PLOVNICK: Our motion to compel
18 was to give us all of their documents related to
19 representation and these were fully complete rep.
20 agreements and all of the documents. And so we
21 would consider it covered by that but the first
22 time that we filed a formal written objection

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1 would have been October 15th when we did it in
2 our written rebuttal statement as to claims.

3 JUDGE BARRETT: Okay. And then at
4 what time, Mr. Boydston, did you provide this
5 information?

6 MR. BOYDSTON: We found it and put it
7 in these exhibits for this, this matter.

8 JUDGE BARRETT: Okay.

9 MS. PLOVNICK: We received it on
10 December 2nd.

11 MR. BOYDSTON: There was no briefing.
12 You know, had we been told to file a responsive
13 brief --

14 JUDGE BARRETT: Excuse me.

15 MR. BOYDSTON: Sorry.

16 JUDGE BARRETT: The objection is
17 overruled. What's the exhibit number?

18 MR. BOYDSTON: 117.

19 JUDGE BARRETT: 117 is admitted.

20 (Whereupon, the above-referred to
21 document was received into evidence as
22 IPG Exhibit 117.)

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1 MR. BOYDSTON: Thank you, Your Honor.

2 BY MR. BOYDSTON:

3 Q Mr. Galaz, take a look at what's been
4 marked as Exhibit 118. Strike that. Let me ask
5 you a question. Are you familiar with Devillier
6 Donegan Enterprises?

7 A Devillier Donegan Enterprises. I'll
8 just say DDE.

9 Q And was that an IPG claimant?

10 A Yes, it was.

11 Q I believe they're referenced on
12 Exhibit 115 as having executed an agreement?

13 A That's correct.

14 Q At some point in time did IPG collect
15 money and distribute money to that entity?

16 A We've collected significant monies for
17 DDE and distributed to them.

18 Q At some point did that entity serve
19 you a notice of termination?

20 A Yes, it did.

21 Q Do you recall when that was?

22 A My recollection was that that was in

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1 August, early August 2011 and up until that point
2 I had been receiving royalties for DDE through
3 noncommercial broadcasting and we had then
4 accounted to DDE, specifically Mr. Devillier, and
5 thought we had a good relationship with him. He
6 nonetheless indicated that they had closed their
7 doors and were no longer licensing and we said
8 we understand and he then forwarded a termination
9 letter.

10 We then immediately responded saying
11 just clarify, this is what termination means
12 because we have a closed term collection right.
13 We never received any indication from him that he
14 took any objection to that and we even accounted
15 to him for royalties even after that without
16 objection from him.

17 Q Please take a look at Exhibit 118. It
18 appears to be an email from you to Mr. Devillier
19 attaching the mandate agreement and letter of
20 extension that was signed. Is that correct?

21 A That's correct. When I first spoke
22 with Mr. Devillier, he didn't recall having

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1 executed any agreements with IPG, so he asked
2 that I forward him copies of the agreements. We
3 did that. He indicated at that time that they
4 had already destroyed all their records because I
5 don't know at what point they actually stopped
6 conducting business, but he didn't have any of
7 his records any longer.

8 Q Did IPG ever threaten Mr. Devillier or
9 his company with legal action?

10 A Not at that point. Ultimately, we did
11 because of something that we discovered that we
12 found to be very distasteful, very ugly.

13 Q And what was that?

14 A Well, we found out as part of these
15 titles that we had spent hundreds of thousands of
16 dollars on and a lot of time putting together
17 that we would send under a notice of
18 confidentiality to all the IPG represented
19 claimants with -- in fact, we would even caution
20 them that it was proprietary and you shouldn't
21 release it because it could hurt the claims of a
22 lot of other producers.

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1 We got an email from Mr. Olaniran
2 upset about something that we had said in one of
3 the emails that attached this attachment and he
4 neglected to omit the email string that revealed
5 that we had sent it to Devillier Donegan, I
6 believe, one evening. He had passed it on to his
7 attorney by that evening. And I think it was by
8 the next morning that we were receiving contact
9 from Mr. Olaniran.

10 Clearly, what was going on there, all
11 of this to have happened overnight, was that
12 there was already an on-going relationship
13 between the two and he was taking our proprietary
14 information and sharing it with Mr. Olaniran.

15 Q What was IPG's response to that to Mr.
16 Devillier?

17 A We wrote a stern letter indicating
18 that we were very disappointed in his actions and
19 from that point forward, the only communications
20 he received were the communications that were
21 received by all other parties which were
22 specifically saying we require this of you. You

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1 need to provide it to us.

2 The only threat against Mr. Devillier
3 came after he stopped communicating with us and
4 refused to communicate and we said look, it's
5 your choice. However, we've been engaged. We've
6 done what we were supposed to do and we expect
7 you to abide by the contract. And that was the
8 extent of any threat against Mr. Devillier.

9 JUDGE BARRETT: Oh, my goodness,
10 we're all having so much fun I didn't realize
11 it's passed 4:30. We're going to be at recess
12 for the remainder of this day. We will reconvene
13 at 9:00 o'clock in the morning. Sorry to
14 interrupt, but let's break here.

15 MR. BOYDSTON: Thank you, Your Honor.

16 (Whereupon, the above-entitled matter
17 went off the record at 4:33 p.m.)
18
19
20
21
22

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